

House File 2426 - Introduced

HOUSE FILE 2426

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 653)

A BILL FOR

1 An Act relating to business corporations, including by
2 providing for their organization and operation; providing
3 for the relationship between shareholders, directors, and
4 officers; and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PRINCIPAL PROVISIONS

Section 1. Section 490.140, subsections 3, 6, 9, and 26, Code Supplement 2011, are amended to read as follows:

3. "*Conspicuous*" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, printing text in italics, ~~or boldface,~~ ~~or contrasting color,~~ ~~or typing in capitals,~~ or underlined, is conspicuous.

6. "*Deliver*" or "*delivery*" means any method of delivery used in conventional commercial practice, including delivery ~~in person,~~ by hand, mail, commercial delivery, and, if authorized in accordance with section 490.141, by electronic transmission.

9. "*Electronic transmission*" or "*electronically transmitted*" means any form or process of communication not directly involving the physical transfer of paper that or another tangible medium, which is suitable all of the following:

a. Suitable for the retention, retrieval, and reproduction of information by the recipient.

b. Retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 490.141, subsection 10.

26. "*Sign*" or "*signature*" means, with present intent to authenticate or adopt a document, doing any of the following:

a. Executing or adopting a tangible symbol to a document, and includes any manual, facsimile, or conformed, or electronic signature.

b. Attaching to or logically associating with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

Sec. 2. Section 490.140, Code Supplement 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 7A. "*Document*" means any of the following:

a. A tangible medium on which information is inscribed, and

1 includes any writing or written instrument.

2 *b.* An electronic record.

3 NEW SUBSECTION. 7B. "*Domestic unincorporated entity*" means
4 an unincorporated entity whose internal affairs are governed by
5 the laws of this state.

6 NEW SUBSECTION. 8A. "*Electronic*" means relating to
7 technology having electrical, digital, magnetic, wireless,
8 optical, electromagnetic, or similar capabilities.

9 NEW SUBSECTION. 8B. "*Electronic record*" means information
10 that is stored in an electronic or other medium and is
11 retrievable in paper form through an automated process used in
12 conventional commercial practice, unless otherwise authorized
13 in accordance with section 490.141, subsection 10.

14 NEW SUBSECTION. 11A. "*Expenses*" means reasonable expenses
15 of any kind that are incurred in connection with a matter.

16 NEW SUBSECTION. 21B. "*Qualified director*" means the same
17 as defined in section 490.143.

18 NEW SUBSECTION. 32. "*Writing*" or "*written*" means any
19 information in the form of a document.

20 Sec. 3. Section 490.141, Code 2011, is amended to read as
21 follows:

22 **490.141 Notice or other communication.**

23 1. Notice under this chapter must be in writing unless oral
24 notice is reasonable under in the circumstances. ~~Notice by~~
25 ~~electronic transmission is written notice.~~ Unless otherwise
26 agreed between the sender and the recipient, words in a notice
27 or other communication under this chapter must be in English.

28 2. ~~Notice~~ A notice or other communication may be
29 ~~communicated in person; by mail or other~~ given or sent by
30 any method of delivery; or by telephone, voice mail, or
31 ~~other,~~ except that electronic means transmissions must be in
32 accordance with this section. If these ~~forms of personal~~
33 ~~notice~~ methods of delivery are impracticable, a notice or
34 other communication may be communicated by a newspaper of
35 general circulation in the area where published; or by radio,

1 television, or other form of public broadcast communication.

2 ~~3. Written notice by a domestic or foreign corporation to~~
3 ~~its shareholder, if in a comprehensible form, is effective~~
4 ~~according to one of the following:~~

5 ~~a. Upon deposit in the United States mail, if mailed~~
6 ~~postpaid and correctly addressed to the shareholder's address~~
7 ~~shown in the corporation's current record of shareholders.~~

8 ~~b. When electronically transmitted to the shareholder in a~~
9 ~~manner authorized by the shareholder.~~

10 ~~4. Written notice~~ Notice or other communication to a
11 domestic or foreign corporation authorized to transact business
12 in this state may be ~~addressed~~ delivered to its registered
13 agent at its registered office or to the secretary of the
14 corporation ~~or its secretary~~ at its principal office shown in
15 its most recent biennial report or, in the case of a foreign
16 corporation that has not yet delivered a biennial report, in
17 its application for a certificate of authority.

18 4. Notice or other communications may be delivered by
19 electronic transmission if consented to by the recipient or if
20 authorized by subsection 10.

21 5. Any consent under subsection 4 may be revoked by the
22 person who consented by written or electronic notice to the
23 person to whom the consent was delivered. Any such consent is
24 deemed revoked if all of the following apply:

25 a. The corporation is unable to deliver two consecutive
26 electronic transmissions given by the corporation in accordance
27 with such consent.

28 b. Such inability becomes known to the secretary or an
29 assistant secretary of the corporation or to the transfer
30 agent, or other person responsible for the giving of notice
31 or other communications; provided, however, the inadvertent
32 failure to treat such inability as a revocation shall not
33 invalidate any meeting or other action.

34 6. Unless otherwise agreed between the sender and the
35 recipient, an electronic transmission is received when all of

1 the following apply:

2 a. The electronic transmission enters an information
3 processing system that the recipient has designated or uses
4 for the purposes of receiving electronic transmissions or
5 information of the type sent, and from which the recipient is
6 able to retrieve the electronic transmission.

7 b. The electronic transmission is in a form capable of being
8 processed by that system.

9 7. Receipt of an electronic acknowledgment from an
10 information processing system described in subsection 6,
11 paragraph "a", establishes that an electronic transmission was
12 received but, by itself, does not establish that the content
13 sent corresponds to the content received.

14 8. An electronic transmission is received under this
15 section even if no individual is aware of its receipt.

16 ~~5.~~ 9. Except as provided in subsection 3, written notice,
17 Notice or other communication if in a comprehensible form or
18 manner, is effective at the earliest of any of the following:

19 a. ~~When received.~~ If in physical form, the earliest of
20 when it is actually received or when it is left at any of the
21 following:

22 (1) A shareholder's address shown on the corporation's
23 record of shareholders maintained by the corporation under
24 section 490.1601, subsection 3.

25 (2) A director's residence or usual place of business.

26 (3) The corporation's principal place of business.

27 ~~b. Five days after its deposit in the United States mail,~~
28 ~~if~~ If mailed postpaid by United States mail postage prepaid
29 and correctly addressed to a shareholder, upon deposit in the
30 United States mail.

31 ~~c. On the date shown on the~~ If mailed by United States
32 mail postage prepaid and correctly addressed to a recipient
33 other than a shareholder, the earliest of when it is actually
34 received or as follows:

35 (1) If sent by registered or certified mail, return receipt

1 requested, if sent by registered or certified mail, return
2 receipt requested, and the date shown on the return receipt is
3 signed by or on behalf of the addressee.

4 (2) Five days after it is deposited in the United States
5 mail.

6 d. If an electronic transmission, when it is received as
7 provided in subsection 6.

8 e. If oral, when communicated.

9 ~~6. Oral notice is effective when communicated if~~
10 ~~communicated in a comprehensible manner.~~

11 10. A notice or other communication may be in the form of
12 an electronic transmission that cannot be directly reproduced
13 in paper form by the recipient through an automated process
14 used in conventional commercial practice only if all of the
15 following apply:

16 a. The electronic transmission is otherwise retrievable in
17 perceivable form.

18 b. The sender and the recipient have consented in writing to
19 the use of such form of electronic transmission.

20 ~~7. 11.~~ If this chapter prescribes notice requirements for
21 notices or other communications in particular circumstances,
22 those requirements govern. If articles of incorporation or
23 bylaws prescribe notice requirements for notices or other
24 communications, not inconsistent with this section or other
25 provisions of this chapter, those requirements govern. The
26 articles of incorporation or bylaws may authorize or require
27 delivery of notices of meetings of directors by electronic
28 transmission.

29 **Sec. 4. NEW SECTION. 490.143 Qualified director.**

30 **1.** For purposes of this chapter, a "qualified director"
31 is a director who takes action under any of the following
32 provisions, if at the time action is to be taken any of the
33 following applies:

34 a. Under section 490.744, the director does not have any of
35 the following:

1 (1) A material interest in the outcome of the proceeding.

2 (2) A material relationship with a person who has such an
3 interest.

4 *b.* Under section 490.853 or 490.855, all of the following
5 apply:

6 (1) The director is not a party to the proceeding.

7 (2) The director is not a director as to whom a transaction
8 is a director's conflicting interest transaction or who sought
9 a disclaimer of the corporation's interest in a business
10 opportunity under section 490.870, which transaction or
11 disclaimer is challenged in the proceeding.

12 (3) The director does not have a material relationship with
13 a director described in either subparagraph (1) or (2).

14 *c.* Under section 490.862, the director is not any of the
15 following:

16 (1) A director as to whom the transaction is a director's
17 conflicting interest transaction.

18 (2) A director who has a material relationship with another
19 director as to whom the transaction is a director's conflicting
20 interest transaction.

21 *d.* Under section 490.870, the director would be a qualified
22 director under paragraph "c", if the business opportunity was a
23 director's conflicting interest transaction.

24 2. For purposes of this section, all of the following apply:

25 *a.* "*Material interest*" means an actual or potential
26 benefit or detriment, other than one which would devolve on
27 the corporation or the shareholders generally, that would
28 reasonably be expected to impair the objectivity of the
29 director's judgment when participating in the action to be
30 taken.

31 *b.* "*Material relationship*" means a familial, financial,
32 professional, employment, or other relationship that would
33 reasonably be expected to impair the objectivity of the
34 director's judgment when participating in the action to be
35 taken.

1 3. The presence of one or more of the following
2 circumstances shall not automatically prevent a director from
3 being a qualified director:

4 a. Nomination or election of the director to the current
5 board by any director who is not a qualified director with
6 respect to the matter, or by any person that has a material
7 relationship with that director, acting alone or participating
8 with others.

9 b. Service as a director of another corporation of which a
10 director who is not a qualified director with respect to the
11 matter, or any individual who has a material relationship with
12 that director, is or was also a director.

13 c. With respect to action to be taken under section 490.744,
14 status as a named defendant, as a director against whom action
15 is demanded, or as a director who approved the conduct being
16 challenged.

17 Sec. 5. NEW SECTION. **490.144 Householding.**

18 1. A corporation has delivered written notice or any
19 other report or statement under this chapter, the articles of
20 incorporation, or the bylaws to all shareholders who share a
21 common address if all of the following apply:

22 a. The corporation delivers one copy of the notice, report,
23 or statement to the common address.

24 b. The corporation addresses the notice, report, or
25 statement to those shareholders either as a group or to each
26 of those shareholders individually or to the shareholders in a
27 form to which each of those shareholders has consented.

28 c. Each of those shareholders consents to delivery of
29 a single copy of such notice, report, or statement to the
30 shareholders' common address. Any such consent shall be
31 revocable by any of such shareholders who deliver written
32 notice of revocation to the corporation. If such written
33 notice of revocation is delivered, the corporation shall begin
34 providing individual notices, reports, or other statements
35 to the revoking shareholder no later than thirty days after

1 delivery of the written notice of revocation.

2 2. Any shareholder who fails to object by written notice
3 to the corporation, within sixty days of written notice by the
4 corporation of its intention to send single copies of notices,
5 reports, or statements to shareholders who share a common
6 address as permitted by subsection 1, shall be deemed to have
7 consented to receiving such single copy at the common address.

8 Sec. 6. Section 490.502, subsection 2, Code 2011, is amended
9 to read as follows:

10 2. If ~~a registered agent changes~~ the street address of the
11 a registered agent's business office changes, the ~~registered~~
12 agent may change the street address of the registered office of
13 any corporation for which the person is the registered agent by
14 notifying delivering a signed written notice of the change to
15 ~~the corporation in writing of the change and signing~~, either
16 ~~manually or in facsimile~~, and delivering to the secretary of
17 state for filing a signed statement that complies with the
18 requirements of subsection 1 and recites that the corporation
19 has been notified of the change.

20 Sec. 7. Section 490.620, subsection 4, Code 2011, is amended
21 to read as follows:

22 4. If a subscriber defaults in payment of money or
23 property under a subscription agreement entered into before
24 incorporation, the corporation may collect the amount owed
25 as any other debt. Alternatively, unless the subscription
26 agreement provides otherwise, the corporation may rescind the
27 agreement and may sell the shares if the debt remains unpaid
28 more than twenty days after the corporation sends a written
29 demand for payment to the subscriber.

30 Sec. 8. Section 490.624, Code 2011, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 3. The board of directors may authorize one
33 or more officers to do all of the following:

34 a. Designate the recipients of rights, options, warrants,
35 or other equity compensation awards that involve the issuance

1 of shares.

2 *b.* Determine, within an amount and subject to any other
3 limitations established by the board and, if applicable, the
4 stockholders, the number of such rights, options, warrants,
5 or other equity compensation awards and the terms thereof to
6 be received by the recipients, provided that an officer shall
7 not use such authority to designate the officer or any other
8 persons the board of directors may specify as a recipient of
9 such rights, options, warrants, or other equity compensation
10 awards.

11 Sec. 9. Section 490.701, subsection 1, Code 2011, is amended
12 to read as follows:

13 1. A Unless directors are elected by written consent in
14 lieu of an annual meeting as permitted by section 490.704, a
15 corporation shall hold annually, at a time stated in or fixed
16 in accordance with the bylaws, a meeting of shareholders;
17 provided, however, that if a corporation's articles of
18 incorporation authorize shareholders to cumulate their votes
19 when electing directors pursuant to section 490.728, directors
20 shall not be elected by less than unanimous consent.

21 Sec. 10. Section 490.703, Code 2011, is amended to read as
22 follows:

23 **490.703 Court-ordered meeting.**

24 1. The district court of the county where a corporation's
25 principal office, or, if none in this state, its registered
26 office, is located may summarily order a meeting to be held
27 ~~either:~~ pursuant to any of the following:

28 *a.* On application of any shareholder of the corporation
29 entitled to participate in an annual meeting if an annual
30 meeting was not held or action by written consent in lieu
31 thereof did not become effective within the earlier of six
32 months after the end of the corporation's fiscal year or
33 fifteen months after its last annual meeting.

34 *b.* On application of a shareholder who signed a demand for
35 a special meeting valid under section 490.702 if ~~either~~ any of

1 the following applies:

2 (1) Notice of the special meeting was not given within
3 thirty days after the date the demand was delivered to the
4 corporation's secretary.

5 (2) The special meeting was not held in accordance with the
6 notice.

7 2. The court may fix the time and place of the meeting,
8 ascertain the shares entitled to participate in the meeting,
9 specify a record date or dates for ascertaining shareholders
10 entitled to notice of and to vote at the meeting, prescribe the
11 form and content of the meeting notice, fix the quorum required
12 for specific matters to be considered at the meeting or direct
13 that the votes represented at the meeting constitute a quorum
14 for action on those matters, and enter other orders necessary
15 to accomplish the purpose or purposes of the meeting.

16 Sec. 11. Section 490.704, Code 2011, is amended to read as
17 follows:

18 **490.704 Action without meeting.**

19 1. Unless otherwise provided in the articles of
20 incorporation, any action required or permitted by this chapter
21 to be taken at a shareholders' meeting may be taken without
22 a meeting or vote, and, except as provided in subsection
23 5, without prior notice, if one or more written consents
24 describing the action taken are signed by the holders of
25 outstanding shares having not less than ninety percent of the
26 votes entitled to be cast at a meeting at which all shares
27 entitled to vote on the action were present and voted, and are
28 delivered to the corporation for inclusion in the minutes or
29 filing with the corporate records.

30 ~~2. A written consent shall bear the date of signature of~~
31 ~~each shareholder who signs the consent and no written consent~~
32 ~~is effective to take the corporate action referred to in~~
33 ~~the consent unless, within sixty days of the earliest dated~~
34 ~~consent delivered in the manner required by this section to the~~
35 ~~corporation, written consents signed by a sufficient number~~

~~1 of holders to take action are delivered to the corporation.~~
~~2 A written consent may be revoked by a writing to that effect~~
~~3 received by the corporation prior to the receipt by the~~
~~4 corporation of unrevoked written consents sufficient in number~~
~~5 to take corporate action. The articles of incorporation may~~
~~6 provide that any action required or permitted by this chapter~~
~~7 to be taken at a shareholders' meeting may be taken without~~
~~8 a meeting, and without prior notice, if consents in writing~~
~~9 setting forth the action so taken are signed by the holders of~~
~~10 outstanding shares having not less than the minimum number of~~
~~11 votes that would be required to authorize or take the action~~
~~12 at a meeting at which all shares entitled to vote on the action~~
~~13 were present and voted. The written consent shall bear the~~
~~14 date of signature of the shareholder who signs the consent and~~
~~15 be delivered to the corporation for inclusion in the minutes or~~
~~16 filing with the corporate records.~~

~~17 3. If not otherwise fixed under section 490.703 or 490.707,~~
~~18 the record date for determining shareholders entitled to take~~
~~19 action without a meeting is the date the first shareholder~~
~~20 signs the consent under subsection 1. If not otherwise fixed~~
~~21 under section 490.707 and if prior board action is not required~~
~~22 respecting the action to be taken without a meeting, the~~
~~23 record date for determining the shareholders entitled to take~~
~~24 action without a meeting shall be the first date on which a~~
~~25 signed written consent is delivered to the corporation. If~~
~~26 not otherwise fixed under section 490.707 and if prior board~~
~~27 action is required respecting the action to be taken without~~
~~28 a meeting, the record date shall be the close of business on~~
~~29 the day the resolution of the board taking such prior action~~
~~30 is adopted. No written consent shall be effective to take~~
~~31 the corporate action referred to therein unless, within sixty~~
~~32 days of the earliest date on which a consent delivered to the~~
~~33 corporation as required by this section was signed, written~~
~~34 consents signed by sufficient shareholders to take the action~~
~~35 have been delivered to the corporation. A written consent~~

1 may be revoked by a writing to that effect delivered to the
2 corporation before unrevoked written consents sufficient in
3 number to take the corporate action are delivered to the
4 corporation.

5 4. A consent signed ~~under~~ pursuant to the provisions of this
6 section has the effect of a meeting vote and may be described
7 as such in any document. Unless the articles of incorporation,
8 bylaws, or a resolution of the board of directors provides for
9 a reasonable delay to permit tabulation of written consents,
10 the action taken by written consent shall be effective when
11 written consents signed by sufficient shareholders to take the
12 action are delivered to the corporation.

13 ~~5. If this chapter requires that notice of proposed action~~
14 ~~be given to shareholders not entitled to vote and the action~~
15 ~~is to be taken by consent of the voting shareholders, the~~
16 ~~corporation must give all shareholders written notice of the~~
17 ~~proposed action at least ten days before the action is taken.~~
18 ~~The notice must contain or be accompanied by the same material~~
19 ~~that, under this chapter, would have been required to be sent~~
20 ~~to shareholders not entitled to vote in a notice of meeting~~
21 ~~at which the proposed action would have been submitted to the~~
22 ~~shareholders for action.~~

23 ~~6. Prompt notice of the taking of corporate action without~~
24 ~~a meeting by less than unanimous written consent shall be given~~
25 ~~to those shareholders who have not consented in writing. If~~
26 ~~the taking of that corporate action requires the giving of~~
27 ~~notice under section 490.1320, subsection 2, the notice of~~
28 ~~the action shall set forth the matters described in section~~
29 ~~490.1322.~~

30 5. a. If this chapter requires that notice of a proposed
31 action be given to nonvoting shareholders and the action is
32 to be taken by written consent of the voting shareholders,
33 the corporation must give its nonvoting shareholders written
34 notice of the action not more than ten days after any of the
35 following:

1 (1) Written consents sufficient to take the action have been
2 delivered to the corporation.

3 (2) Such later date that tabulation of consents is completed
4 pursuant to an authorization under subsection 4.

5 b. The notice must reasonably describe the action taken and
6 contain or be accompanied by the same material that, under any
7 provision of this chapter, would have been required to be sent
8 to nonvoting shareholders in a notice of a meeting at which the
9 proposed action would have been submitted to the shareholders
10 for action.

11 6. a. If action is taken by less than unanimous written
12 consent of the voting shareholders, the corporation must give
13 its nonconsenting voting shareholders written notice of the
14 action not more than ten days after any of the following:

15 (1) Written consents sufficient to take the action have been
16 delivered to the corporation.

17 (2) Such later date that tabulation of consents is completed
18 pursuant to an authorization under subsection 4.

19 b. The notice must reasonably describe the action taken
20 and contain or be accompanied by the same material that, under
21 any provision of this chapter, would have been required to be
22 sent to voting shareholders in a notice of a meeting at which
23 the action would have been submitted to the shareholders for
24 action.

25 7. The notice requirements in subsections 5 and 6 shall not
26 delay the effectiveness of actions taken by written consent,
27 and a failure to comply with such notice requirements shall
28 not invalidate actions taken by written consent, provided that
29 this subsection shall not be deemed to limit judicial power
30 to fashion any appropriate remedy in favor of a shareholder
31 adversely affected by a failure to give such notice within the
32 required time period.

33 Sec. 12. Section 490.705, subsections 1 and 5, Code 2011,
34 are amended to read as follows:

35 1. A corporation shall notify shareholders of the date,

1 time, and place of each annual and special shareholders'
 2 meeting no fewer than ten nor more than sixty days before
 3 the meeting date. The notice shall include the record date
 4 for determining the shareholders entitled to vote at the
 5 meeting, if such date is different than the record date for
 6 determining shareholders entitled to notice of the meeting. If
 7 the board of directors has authorized participation by means
 8 of remote communication pursuant to section 490.709 for any
 9 class or series of shareholders, the notice to such class or
 10 series of shareholders shall describe the means of remote
 11 communication to be used. Unless this chapter or the articles
 12 of incorporation require otherwise, the corporation is required
 13 to give notice only to shareholders entitled to vote at the
 14 meeting as of the record date for determining the shareholders
 15 entitled to notice of the meeting.

16 5. Unless the bylaws require otherwise, if an annual or
 17 special shareholders' meeting is adjourned to a different date,
 18 time, or place, notice need not be given of the new date,
 19 time, or place if the new date, time, or place is announced at
 20 the meeting before adjournment. If a new record date for the
 21 adjourned meeting is or must be fixed under section 490.707,
 22 however, notice of the adjourned meeting must be given under
 23 this section to ~~persons who are shareholders as of the new~~
 24 ~~record date~~ entitled to vote at such adjourned meeting as of
 25 the record date fixed for notice of such adjourned meeting.

26 Sec. 13. Section 490.707, Code 2011, is amended to read as
 27 follows:

28 **490.707 Record date.**

29 1. The bylaws may fix or provide the manner of fixing
 30 the record date or dates for one or more voting groups in
 31 order to determine the shareholders entitled to notice of a
 32 shareholders' meeting, to demand a special meeting, to vote,
 33 or to take any other action. If the bylaws do not fix or
 34 provide for fixing a record date, the board of directors of the
 35 corporation may fix a future date as the record date.

1 2. A record date fixed under this section shall not be more
2 than seventy days before the meeting or action requiring a
3 determination of shareholders.

4 3. A determination of shareholders entitled to notice of
5 or to vote at a shareholders' meeting is effective for any
6 adjournment of the meeting unless the board of directors fixes
7 a new record date or dates, which it must do if the meeting is
8 adjourned to a date more than one hundred twenty days after the
9 date fixed for the original meeting.

10 4. If a court orders a meeting adjourned to a date more than
11 one hundred twenty days after the date fixed for the original
12 meeting, it may provide that the original record date continues
13 in effect or it may fix a new record date or dates.

14 5. The record date for a shareholders' meeting fixed by
15 or in the manner provided in the bylaws or by the board of
16 directors shall be the record date for determining shareholders
17 entitled both to notice of and to vote at the shareholders'
18 meeting unless, in the case of a record date fixed by the
19 board of directors and to the extent not prohibited by the
20 bylaws, the board, at the time it fixes the record date for
21 shareholders entitled to notice of the meeting, fixes a later
22 record date on or before the date of the meeting to determine
23 the shareholders entitled to vote at the meeting.

24 Sec. 14. NEW SECTION. **490.709 Remote participation in**
25 **annual and special meetings.**

26 1. Shareholders of any class or series may participate in
27 any meeting of shareholders by means of remote communication to
28 the extent the board of directors authorizes such participation
29 for such class or series. Participation by means of remote
30 communication shall be subject to such guidelines and
31 procedures as the board of directors adopts, and shall be in
32 conformity with subsection 2.

33 2. Shareholders participating in a shareholders' meeting
34 by means of remote communication shall be deemed present and
35 may vote at such a meeting if the corporation has implemented

1 reasonable measures to do all of the following:

2 a. Verify that each person participating remotely is a
3 shareholder.

4 b. Provide such shareholders a reasonable opportunity to
5 participate in the meeting and to vote on matters submitted to
6 the shareholders, including an opportunity to communicate, and
7 to read or hear the proceedings of the meeting, substantially
8 concurrently with such proceedings.

9 Sec. 15. Section 490.720, Code 2011, is amended to read as
10 follows:

11 **490.720 Shareholders' list for meeting.**

12 1. After fixing a record date for a meeting, a corporation
13 shall prepare an alphabetical list of the names of all its
14 shareholders who are entitled to notice of a shareholders'
15 meeting. ~~The~~ If the board of directors fixes a different
16 record date under section 490.707, subsection 5, to determine
17 the shareholders entitled to vote at the meeting, a corporation
18 also shall prepare an alphabetical list of the names of all
19 its shareholders who are entitled to vote at the meeting. A
20 list must be arranged by voting group and within each voting
21 group by class or series of shares, and show the address of and
22 number of shares held by each shareholder.

23 2. The shareholders' list for notice must be available for
24 inspection by any shareholder beginning two business days after
25 notice of the meeting is given for which the list was prepared
26 and continuing through the meeting, at the corporation's
27 principal office or at a place identified in the meeting notice
28 in the city where the meeting will be held. A shareholders'
29 list for voting must be similarly available for inspection
30 promptly after the record date for voting. A shareholder,
31 or a shareholder's agent or attorney, is entitled on written
32 demand to inspect and, subject to the requirements of section
33 490.1602, subsection 3 4, to copy the a list, during regular
34 business hours and at the person's expense, during the period
35 it is available for inspection.

1 3. The corporation shall make the ~~shareholders'~~ list of
2 shareholders entitled to vote available at the meeting, and any
3 shareholder, or a shareholder's agent or attorney, is entitled
4 to inspect the list at any time during the meeting or any
5 adjournment.

6 4. If the corporation refuses to allow a shareholder, or a
7 shareholder's agent or attorney, to inspect ~~the~~ a shareholders'
8 list before or at the meeting, or copy ~~the~~ a list as permitted
9 by subsection 2, the district court of the county where a
10 corporation's principal office or, if none in this state,
11 its registered office, is located, on application of the
12 shareholder, may summarily order the inspection or copying at
13 the corporation's expense and may postpone the meeting for
14 which the list was prepared until the inspection or copying is
15 complete.

16 5. Refusal or failure to prepare or make available ~~the~~ a
17 shareholders' list does not affect the validity of action taken
18 at the meeting.

19 Sec. 16. Section 490.722, subsection 2, Code 2011, is
20 amended by striking the subsection.

21 Sec. 17. Section 490.724, subsection 4, Code 2011, is
22 amended to read as follows:

23 4. The corporation and its officer or agent who accepts
24 or rejects a vote, consent, waiver, or proxy appointment in
25 good faith and in accordance with the standards of this section
26 ~~or section 490.722, subsection 2,~~ are not liable in damages
27 to the shareholder for the consequences of the acceptance or
28 rejection.

29 Sec. 18. Section 490.728, Code 2011, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 4. Shares otherwise entitled to vote
32 cumulatively shall not be voted cumulatively at a particular
33 meeting unless any of the following applies:

34 a. The meeting notice or proxy statement accompanying
35 the notice states conspicuously that cumulative voting is

1 authorized.

2 **b.** A shareholder who has the right to cumulate the
3 shareholder's votes gives notice to the corporation not less
4 than forty-eight hours before the time set for the meeting of
5 the shareholder's intent to cumulate votes during the meeting,
6 and if one shareholder gives this notice all other shareholders
7 in the same voting group participating in the election are
8 entitled to cumulate their votes without giving further notice.

9 Sec. 19. Section 490.742, subsection 2, Code 2011, is
10 amended to read as follows:

11 2. Ninety days have expired from the date delivery of
12 the demand was made, unless the shareholder has earlier been
13 notified that the demand has been rejected by the corporation
14 or unless irreparable injury to the corporation would result by
15 waiting for the expiration of the ninety-day period.

16 Sec. 20. Section 490.744, Code 2011, is amended to read as
17 follows:

18 **490.744 Dismissal.**

19 1. A derivative proceeding shall be dismissed by the court
20 on motion by the corporation if one of the groups specified
21 in subsection 2 or ~~6~~ 5 has determined in good faith after
22 conducting a reasonable inquiry upon which its conclusions are
23 based that the maintenance of the derivative proceeding is
24 not in the best interests of the corporation. A corporation
25 moving to dismiss on this basis shall submit in support of the
26 motion a short and concise statement of the reasons for its
27 determination.

28 2. Unless a panel is appointed pursuant to subsection ~~6~~ 5,
29 the determination in subsection 1 shall be made by ~~one~~ any of
30 the following:

31 **a.** A majority vote of ~~independent~~ qualified directors
32 present at a meeting of the board of directors if the
33 ~~independent~~ qualified directors constitute a quorum.

34 **b.** A majority vote of a committee consisting of two or
35 more ~~independent~~ qualified directors appointed by majority

1 vote of ~~independent~~ qualified directors present at a meeting
2 of the board of directors, regardless of whether ~~or not~~ such
3 ~~independent~~ qualified directors constitute a quorum.

4 3. a. ~~None of the following shall by itself cause a~~
5 ~~director to be considered not independent for purposes of this~~
6 ~~section:~~

7 ~~a. The nomination or election of the director by persons~~
8 ~~who are defendants in the derivative proceeding or against whom~~
9 ~~action is demanded.~~

10 ~~b. The naming of the director as a defendant in the~~
11 ~~derivative proceeding or as a person against whom action is~~
12 ~~demand.~~

13 ~~c. The approval by the director of the act being challenged~~
14 ~~in the derivative proceeding or demand if the act resulted in~~
15 ~~no personal benefit to the director.~~

16 4. If a derivative proceeding is commenced after
17 a determination has been made rejecting a demand by a
18 shareholder, the complaint shall allege with particularity
19 facts establishing ~~one~~ any of the following:

20 a. (1) That a majority of the board of directors did not
21 consist of ~~independent~~ qualified directors at the time the
22 determination was made.

23 b. (2) That the requirements of subsection 1 have not been
24 met.

25 b. All discovery and other proceedings shall be stayed
26 during the pendency of any motion to dismiss unless the
27 court finds upon the motion of any party that particularized
28 discovery is necessary to preserve evidence or prevent undue
29 prejudice to that party.

30 5. 4. ~~If a majority of the board of directors does not~~
31 ~~consist of independent directors at the time the determination~~
32 ~~is made, the corporation~~ If a majority of the board of
33 directors consisted of qualified directors at the time the
34 determination was made, the plaintiff shall have the burden of
35 proving that the requirements of subsection 1 have not been

1 met; if not, the corporation shall have the burden of proving
2 that the requirements of subsection 1 have been met. ~~If a~~
3 ~~majority of the board of directors consists of independent~~
4 ~~directors at the time the determination is made, the plaintiff~~
5 ~~shall have the burden of proving that the requirements of~~
6 ~~subsection 1 have not been met.~~

7 ~~6.~~ 5. The Upon motion by the corporation, the court may
8 appoint a panel of one or more ~~independent persons upon motion~~
9 ~~by the corporation~~ individuals to make a determination whether
10 the maintenance of the derivative proceeding is in the best
11 interests of the corporation. In such case, the plaintiff
12 shall have the burden of proving that the requirements of
13 subsection 1 have not been met.

14 Sec. 21. Section 490.746, Code 2011, is amended to read as
15 follows:

16 **490.746 Payment of expenses.**

17 On termination of the derivative proceeding, the court may
18 do ~~either~~ any of the following:

19 1. Order the corporation to pay the plaintiff's ~~reasonable~~
20 ~~expenses, including attorney fees~~ incurred in the proceeding,
21 if it finds that the proceeding has resulted in a substantial
22 benefit to the corporation.

23 2. Order the plaintiff to pay any defendant's ~~reasonable~~
24 ~~expenses, including attorney fees~~ incurred in defending the
25 proceeding, if it finds that the proceeding was commenced or
26 maintained without reasonable cause or for an improper purpose.

27 Sec. 22. NEW SECTION. **490.748 Shareholder action to appoint**
28 **custodian or receiver.**

29 1. The district court may appoint one or more persons
30 to be custodians, or, if the corporation is insolvent, to
31 be receivers, of and for a corporation in a proceeding by a
32 shareholder where it is established that any of the following
33 applies:

34 a. The directors are deadlocked in the management of
35 the corporate affairs, the shareholders are unable to break

1 the deadlock, and irreparable injury to the corporation is
2 threatened or being suffered.

3 *b.* The directors or those in control of the corporation are
4 acting fraudulently and irreparable injury to the corporation
5 is threatened or being suffered.

6 2. *a.* The district court may issue injunctions, appoint a
7 temporary custodian or temporary receiver with all the powers
8 and duties the court directs, take other action to preserve the
9 corporate assets wherever located, and carry on the business of
10 the corporation until a full hearing is held.

11 *b.* The district court shall hold a full hearing, after
12 notifying all parties to the proceeding and any interested
13 persons designated by the court, before appointing a custodian
14 or receiver.

15 *c.* The district court has jurisdiction over the corporation
16 and all of its property, wherever located.

17 3. The district court may appoint an individual or domestic
18 or foreign corporation, authorized to transact business in this
19 state, as a custodian or receiver and may require the custodian
20 or receiver to post bond, with or without sureties, in an
21 amount the court directs.

22 4. The district court shall describe the powers and duties
23 of the custodian or receiver in its appointing order, which may
24 be amended from time to time. Among other powers, all of the
25 following apply:

26 *a.* A custodian may exercise all of the powers of the
27 corporation, through or in place of its board of directors, to
28 the extent necessary to manage the business and affairs of the
29 corporation.

30 *b.* A receiver may do any of the following:

31 (1) Dispose of all or any part of the assets of the
32 corporation wherever located, at a public or private sale, if
33 authorized by the district court.

34 (2) Sue and defend in the receiver's own name as receiver in
35 all courts of this state.

1 5. The district court during a custodianship may
2 redesignate the custodian as a receiver, and during a
3 receivership may redesignate the receiver as a custodian, if
4 doing so is in the best interests of the corporation.

5 6. The district court from time to time during the
6 custodianship or receivership may order compensation paid and
7 expense disbursements or reimbursements made to the custodian
8 or receiver from the assets of the corporation or proceeds from
9 the sale of its assets.

10 Sec. 23. Section 490.801, Code 2011, is amended to read as
11 follows:

12 **490.801 Requirement for and ~~duties~~ functions of board of**
13 **directors.**

14 1. Except as provided in section 490.732, each corporation
15 must have a board of directors.

16 2. All corporate powers shall be exercised by or under the
17 authority of the board of directors of the corporation, and
18 the business and affairs of the corporation shall be managed
19 by or under the direction, and subject to the oversight, of,
20 its board of directors, subject to any limitation set forth in
21 the articles of incorporation, or in an agreement authorized
22 under section 490.732.

23 Sec. 24. Section 490.805, subsection 2, Code Supplement
24 2011, is amended by striking the subsection and inserting in
25 lieu thereof the following:

26 2. The terms of all other directors expire at the next,
27 or if their terms are staggered in accordance with section
28 490.806 or 490.806A, at the applicable second or third, annual
29 shareholders' meeting following their election, except to
30 the extent a shorter term is specified in the articles of
31 incorporation in the event of a director nominee failing to
32 receive a specified vote for the election.

33 Sec. 25. Section 490.805, subsection 5, Code Supplement
34 2011, is amended to read as follows:

35 5. ~~Despite~~ Except to the extent otherwise provided in

1 the articles of incorporation, despite the expiration of a
2 director's term, the director continues to serve until a the
3 director's successor for that director is elected and qualifies
4 or until there is a decrease in the number of directors.

5 Sec. 26. Section 490.807, Code 2011, is amended to read as
6 follows:

7 **490.807 Resignation of directors.**

8 1. A director may resign at any time by delivering a
9 written notice resignation to the board of directors, or its
10 chairperson chair, or to the secretary of the corporation.

11 2. A resignation is effective when the notice resignation
12 is delivered unless the notice resignation specifies a
13 later effective date or an effective date determined upon
14 the happening of an event or events. A resignation that is
15 conditioned upon failing to receive a specified vote for
16 election as a director may provide that it is irrevocable.

17 Sec. 27. Section 490.810, subsection 2, Code Supplement
18 2011, is amended to read as follows:

19 2. If the vacant office was held by a director elected by
20 a voting group of shareholders, only the holders of shares of
21 that voting group are entitled to vote to fill the vacancy
22 if it is filled by the shareholders, and only the directors
23 elected by that voting group are entitled to fill the vacancy
24 if it is filled by the directors.

25 Sec. 28. NEW SECTION. **490.826 Submission of matters for**
26 **shareholder vote.**

27 A corporation may agree to submit a matter to a vote of its
28 shareholders even if, after approving the matter, the board of
29 directors determines it no longer recommends the matter.

30 Sec. 29. Section 490.830, Code 2011, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 2A. In discharging board or committee
33 duties a director shall disclose, or cause to be disclosed, to
34 the other board or committee members information not already
35 known by them but known by the director to be material to the

1 discharge of their decision-making or oversight functions,
2 except that disclosure is not required to the extent that the
3 director reasonably believes that doing so would violate a
4 duty imposed under law, a legally enforceable obligation of
5 confidentiality, or a professional ethics rule.

6 Sec. 30. Section 490.831, subsection 1, paragraph a,
7 subparagraph (1), Code 2011, is amended to read as follows:

8 (1) No defense interposed by the director based on any of
9 the following precludes liability:

10 (a) A provision in the articles of incorporation authorized
11 by section 490.202, subsection 2, paragraph "d", ~~or the.~~

12 (b) The protection afforded by section 490.832 if
13 ~~interposed as a bar to the proceeding by the director, does not~~
14 ~~preclude liability~~ 490.861 for action taken in compliance with
15 section 490.862 or 490.863.

16 (c) The protection afforded by section 490.870.

17 Sec. 31. Section 490.831, subsection 3, paragraphs a and b,
18 Code 2011, are amended to read as follows:

19 a. In any instance where fairness is at issue, such
20 as consideration of the fairness of a transaction to the
21 corporation under section ~~490.832~~ 490.861, subsection 2,
22 paragraph "c", alter the burden of proving the fact or lack of
23 fairness otherwise applicable.

24 b. Alter the fact or lack of liability of a director
25 under another section of this chapter, such as the provisions
26 governing the consequences of an unlawful distribution under
27 section 490.833 or a transactional interest under section
28 ~~490.832~~ 490.861.

29 Sec. 32. Section 490.841, Code 2011, is amended to read as
30 follows:

31 **490.841 ~~Duties~~ Functions of officers.**

32 Each officer has the authority and shall perform the ~~duties~~
33 functions set forth in the bylaws or, to the extent consistent
34 with the bylaws, the ~~duties~~ functions prescribed by the board
35 of directors or by direction of an officer authorized by the

1 board of directors to prescribe the ~~duties~~ functions of other
2 officers.

3 Sec. 33. Section 490.842, subsection 1, unnumbered
4 paragraph 1, Code 2011, is amended to read as follows:

5 An officer when performing in such capacity ~~shall~~ has the
6 duty to act in conformity with all of the following:

7 Sec. 34. Section 490.842, Code 2011, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 1A. The duty of an officer includes the
10 obligation to do all of the following:

11 a. Inform the superior officer to whom, or the board of
12 directors or the committee thereof to which, the officer
13 reports of information about the affairs of the corporation
14 known to the officer, within the scope of the officer's
15 functions, and known to the officer to be material to such
16 superior officer, board, or committee.

17 b. Inform a superior officer, or another appropriate
18 person within the corporation, or the board of directors, or a
19 committee thereof, of any actual or probable material violation
20 of law involving the corporation or material breach of duty
21 to the corporation by an officer, employee, or agent of the
22 corporation, that the officer believes has occurred or is
23 likely to occur.

24 Sec. 35. Section 490.850, subsection 2, Code 2011, is
25 amended to read as follows:

26 2. "*Director*" or "*officer*" means an individual who is or
27 was a director or officer, respectively, of a corporation or
28 who, while a director or officer of the corporation, is or was
29 serving at the corporation's request as a director, officer,
30 partner, trustee, employee, or agent of another domestic
31 or foreign corporation, partnership, joint venture, trust,
32 employee benefit plan, or other entity. A director or officer
33 is considered to be serving an employee benefit plan at the
34 corporation's request if the ~~director's~~ individual's duties to
35 the corporation also impose duties on, or otherwise involve

1 services by, ~~that director~~ the individual to the plan or to
2 participants in or beneficiaries of the plan. "*Director*" or
3 "*officer*" includes, unless the context requires otherwise, the
4 estate or personal representative of a director or officer.

5 Sec. 36. Section 490.850, subsections 3 and 4, Code 2011,
6 are amended by striking the subsections.

7 Sec. 37. Section 490.850, subsection 5, Code 2011, is
8 amended to read as follows:

9 5. "*Liability*" means the obligation to pay a judgment,
10 settlement, penalty, fine, including an excise tax assessed
11 with respect to an employee benefit plan, or ~~reasonable~~
12 expenses incurred with respect to a proceeding.

13 Sec. 38. Section 490.853, Code 2011, is amended to read as
14 follows:

15 **490.853 Advance for expenses.**

16 1. A corporation may, before final disposition of
17 a proceeding, advance funds to pay for or reimburse the
18 reasonable expenses incurred in connection with the proceeding
19 ~~by a director~~ an individual who is a party to a the proceeding
20 ~~because the person is a director if the person~~ that individual
21 is a member of the board of directors if the director delivers
22 all of the following to the corporation:

23 a. A signed written affirmation of the director's good
24 faith belief that the ~~director has met the~~ relevant standard
25 of conduct described in section 490.851 has been met by the
26 director or that the proceeding involved conduct for which
27 liability has been eliminated under a provision of the articles
28 of incorporation as authorized by section 490.202, subsection
29 2, paragraph "d".

30 b. ~~The director's~~ A signed written undertaking of the
31 director to repay any funds advanced if the director is not
32 entitled to mandatory indemnification under section 490.852 and
33 it is ultimately determined under section 490.854 or ~~section~~
34 490.855 that the director has not met the relevant standard of
35 conduct described in section 490.851.

1 2. The undertaking required by subsection 1, paragraph "b",
2 must be an unlimited general obligation of the director but
3 need not be secured and may be accepted without reference to
4 the financial ability of the director to make repayment.

5 3. Authorizations under this section shall be made
6 according to ~~one~~ any of the following:

7 a. By the board of directors as follows:

8 (1) If there are two or more ~~disinterested~~ qualified
9 directors, by a majority vote of all the ~~disinterested~~
10 qualified directors, a majority of whom shall for such purpose
11 constitute a quorum, or by a majority of the members of a
12 committee of two or more ~~disinterested~~ qualified directors
13 appointed by such a vote.

14 (2) If there are fewer than two ~~disinterested~~ qualified
15 directors, by the vote necessary for action by the board
16 in accordance with section 490.824, subsection 3, in which
17 authorization directors who ~~do~~ are not ~~qualify as disinterested~~
18 qualified directors may participate.

19 b. By the shareholders, but shares owned by or voted under
20 the control of a director who at the time ~~does not qualify as~~ is
21 not a ~~disinterested~~ qualified director ~~may~~ shall not be voted
22 on the authorization.

23 Sec. 39. Section 490.855, Code 2011, is amended to read as
24 follows:

25 **490.855 Determination and authorization of indemnification.**

26 1. A corporation shall not indemnify a director under
27 section 490.851 unless authorized for a specific proceeding
28 after a determination has been made that indemnification ~~of~~
29 ~~the director~~ is permissible because the director has met the
30 relevant standard of conduct set forth in section 490.851.

31 2. The determination shall be made by any of the following:

32 a. If there are two or more ~~disinterested~~ qualified
33 directors, by the board of directors by a majority vote of all
34 the ~~disinterested~~ qualified directors, a majority of whom shall
35 for such purpose constitute a quorum, or by a majority of the

1 members of a committee of two or more ~~disinterested~~ qualified
2 directors appointed by such a vote.

3 **b.** By special legal counsel selected in one of the following
4 manners:

5 (1) Selected in the manner prescribed in paragraph "a".

6 (2) If there are fewer than two ~~disinterested~~ qualified
7 directors, selected by the board of directors, in which
8 selection directors who ~~do not qualify as disinterested~~ are not
9 qualified directors may participate.

10 **c.** By the shareholders, but shares owned by or voted under
11 the control of a director who at the time ~~does not qualify as a~~
12 ~~disinterested~~ is not a qualified director shall not be voted on
13 the determination.

14 3. Authorization of indemnification shall be made in
15 the same manner as the determination that indemnification
16 is permissible, except that if there are fewer than two
17 ~~disinterested~~ qualified directors or if the determination is
18 made by special legal counsel, authorization of indemnification
19 shall be made by those entitled ~~under subsection 2, paragraph~~
20 ~~"b",~~ to select special legal counsel under subsection 2,
21 paragraph "b", subparagraph (2).

22 Sec. 40. Section 490.858, Code 2011, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 1A. A right of indemnification or to
25 advances for expenses created by this division or under
26 subsection 1 and in effect at the time of an act or omission
27 shall not be eliminated or impaired with respect to such act
28 or omission by an amendment of the articles of incorporation
29 or bylaws or a resolution of the directors or shareholders,
30 adopted after the occurrence of such act or omission, unless,
31 in the case of a right created under subsection 1, the
32 provision creating such right and in effect at the time of
33 such act or omission explicitly authorizes such elimination or
34 impairment after such act or omission has occurred.

35 Sec. 41. Section 490.858, subsection 3, Code 2011, is

1 amended to read as follows:

2 3. A Subject to subsection 1A, a corporation may, by a
3 provision in its articles of incorporation, limit any of the
4 rights to indemnification or advance for expenses created by or
5 pursuant to this part.

6 Sec. 42. NEW SECTION. 490.860 Part definitions.

7 As used in this part, unless the context otherwise requires:

8 1. "*Control*", including the term "*controlled by*", means any
9 of the following:

10 a. Having the power, directly or indirectly, to elect or
11 remove a majority of the members of the board of directors
12 or other governing body of an entity, whether through the
13 ownership of voting shares or interests, by contract, or
14 otherwise.

15 b. Being subject to a majority of the risk of loss from the
16 entity's activities or entitled to receive a majority of the
17 entity's residual returns.

18 2. "*Director's conflicting interest transaction*" means
19 a transaction effected or proposed to be effected by the
20 corporation, or by an entity controlled by the corporation to
21 which, or respecting which, any of the following applies:

22 a. To which, at the relevant time, the director is a party.

23 b. Respecting which, at the relevant time, the director
24 had knowledge and a material financial interest known to the
25 director.

26 c. Respecting which, at the relevant time, the director knew
27 that a related person was a party or had a material financial
28 interest.

29 3. "*Fair to the corporation*" means, for purposes of section
30 490.861, subsection 2, paragraph "c", that the transaction
31 as a whole was beneficial to the corporation, taking into
32 appropriate account whether it was all of the following:

33 a. Fair in terms of the director's dealings with the
34 corporation.

35 b. Comparable to what might have been obtainable in an arm's

1 length transaction, given the consideration paid or received
2 by the corporation.

3 4. "*Material financial interest*" means a financial interest
4 in a transaction that would reasonably be expected to impair
5 the objectivity of the director's judgment when participating
6 in action on the authorization of the transaction.

7 5. "*Related person*" means any of the following:

8 a. The director's spouse.

9 b. A child, stepchild, grandchild, parent, stepparent,
10 grandparent, sibling, step sibling, half sibling, aunt, uncle,
11 niece, or nephew, or spouse of any thereof, of the director or
12 of the director's spouse.

13 c. An individual living in the same home as the director.

14 d. An entity, other than the corporation or an entity
15 controlled by the corporation, controlled by the director or
16 any person specified in this subsection.

17 e. A domestic or foreign person who is any of the following:

18 (1) A business or nonprofit corporation, other than the
19 corporation or an entity controlled by the corporation, of
20 which the director is a director.

21 (2) An unincorporated entity of which the director is a
22 general partner or a member of the governing body.

23 (3) An individual, trust, or estate for whom or of which the
24 director is a trustee, guardian, personal representative, or
25 like fiduciary.

26 f. A person that is, or an entity that is controlled by, an
27 employer of the director.

28 6. "*Relevant time*" means any of the following:

29 a. The time at which directors' action respecting the
30 transaction is taken in compliance with section 490.862.

31 b. If the transaction is not brought before the board of
32 directors of the corporation, or its committee, for action
33 under section 490.862, at the time the corporation, or an
34 entity controlled by the corporation, becomes legally obligated
35 to consummate the transaction.

1 7. "*Required disclosure*" means disclosure of all of the
2 following:

3 a. The existence and nature of the director's conflicting
4 interest.

5 b. All facts known to the director respecting the subject
6 matter of the transaction that a director free of such
7 conflicting interest would reasonably believe to be material in
8 deciding whether to proceed with the transaction.

9 Sec. 43. NEW SECTION. **490.861 Judicial action.**

10 1. A transaction effected or proposed to be effected by the
11 corporation, or by an entity controlled by the corporation,
12 shall not be the subject of equitable relief, or give rise to
13 an award of damages or other sanctions against a director of
14 the corporation, in a proceeding by a shareholder or by or in
15 the right of the corporation, on the ground that the director
16 has an interest respecting the transaction, if it is not a
17 director's conflicting interest transaction.

18 2. A director's conflicting interest transaction may
19 not be the subject of equitable relief, or give rise to an
20 award of damages or other sanctions against a director of the
21 corporation, in a proceeding by a shareholder or by or in the
22 right of the corporation, on the ground that the director has
23 an interest respecting the transaction, if any of the following
24 apply:

25 a. Directors' action respecting the transaction was taken in
26 compliance with section 490.862 at any time.

27 b. Shareholders' action respecting the transaction was taken
28 in compliance with section 490.863 at any time.

29 c. The transaction, judged according to the circumstances
30 at the relevant time, is established to have been fair to the
31 corporation.

32 Sec. 44. NEW SECTION. **490.862 Directors' action.**

33 1. Directors' action respecting a director's conflicting
34 interest transaction is effective for purposes of section
35 490.861, subsection 2, paragraph "a", if the transaction has

1 been authorized by the affirmative vote of a majority, but
2 no fewer than two, of the qualified directors who voted on
3 the transaction, after required disclosure by the conflicted
4 director of information not already known by such qualified
5 directors, or after modified disclosure in compliance with
6 subsection 2, provided that all of the following apply:

7 *a.* The qualified directors have deliberated and voted
8 outside the presence of and without the participation by any
9 other director.

10 *b.* Where the action has been taken by a committee, all
11 members of the committee were qualified directors, and any of
12 the following apply:

13 (1) The committee was composed of all the qualified
14 directors on the board of directors.

15 (2) The members of the committee were appointed by the
16 affirmative vote of a majority of the qualified directors on
17 the board.

18 2. Notwithstanding subsection 1, when a transaction is
19 a director's conflicting interest transaction only because a
20 related person described in section 490.860, subsection 5,
21 paragraph "e" or "f", is a party to or has a material financial
22 interest in the transaction, the conflicted director is not
23 obligated to make required disclosure to the extent that the
24 director reasonably believes that doing so would violate a
25 duty imposed under law, a legally enforceable obligation of
26 confidentiality, or a professional ethics rule, provided that
27 the conflicted director discloses to the qualified directors
28 voting on the transaction all of the following:

29 *a.* All information required to be disclosed that is not so
30 violative.

31 *b.* The existence and nature of the director's conflicting
32 interest.

33 *c.* The nature of the conflicted director's duty not to
34 disclose the confidential information.

35 3. A majority, but no fewer than two, of all the qualified

1 directors on the board of directors, or on the committee,
2 constitutes a quorum for purposes of action that complies with
3 this section.

4 4. Where directors' action under this section does not
5 satisfy a quorum or voting requirement applicable to the
6 authorization of the transaction by reason of the articles of
7 incorporation, the bylaws, or a provision of law, independent
8 action to satisfy those authorization requirements must be
9 taken by the board of directors or a committee, in which action
10 directors who are not qualified directors may participate.

11 Sec. 45. NEW SECTION. 490.863 Shareholders' action.

12 1. a. Shareholders' action respecting a director's
13 conflicting interest transaction is effective for purposes of
14 section 490.861, subsection 2, paragraph "b", if a majority of
15 the votes cast by the holders of all qualified shares are in
16 favor of the transaction after all of the following occur:

17 (1) Notice to shareholders describing the action to be taken
18 respecting the transaction.

19 (2) Provision to the corporation of the information
20 referred to in subsection 2.

21 (3) Communication to the shareholders entitled to vote
22 on the transaction of the information that is the subject of
23 required disclosure, to the extent the information is not known
24 by them.

25 b. In the case of shareholders' action at a meeting, the
26 shareholders entitled to vote shall be determined as of the
27 record date for notice of the meeting.

28 2. A director who has a conflicting interest respecting
29 the transaction shall, before the shareholders' vote, inform
30 the secretary or other officer or agent of the corporation
31 authorized to tabulate votes, in writing, of the number of
32 shares that the director knows are not qualified shares under
33 subsection 3, and the identity of the holders of those shares.

34 3. For purposes of this section, all of the following apply:

35 a. "Holder" means and "held by" refers to shares held by

1 both a record shareholder, as defined in section 490.1301,
2 subsection 7, and a beneficial shareholder, as defined in
3 490.1301, subsection 2.

4 *b. "Qualified shares"* means all shares entitled to be
5 voted with respect to the transaction except for shares that
6 the secretary or other officer or agent of the corporation
7 authorized to tabulate votes either knows, or under subsection
8 2 is notified, are held by any of the following:

9 (1) A director who has a conflicting interest respecting the
10 transaction.

11 (2) A related person of the director, excluding a person
12 described in section 490.860, subsection 5, paragraph "f".

13 4. A majority of the votes entitled to be cast by the
14 holders of all qualified shares constitutes a quorum for
15 purposes of compliance with this section. Subject to the
16 provisions of subsection 5, shareholders' action that otherwise
17 complies with this section is not affected by the presence of
18 holders, or by the voting, of shares that are not qualified
19 shares.

20 5. If a shareholders' vote does not comply with subsection
21 1 solely because of a director's failure to comply with
22 subsection 2, and if the director establishes that the failure
23 was not intended to influence and did not in fact determine the
24 outcome of the vote, the court may take such action respecting
25 the transaction and the director, and may give such effect,
26 if any, to the shareholders' vote, as the court considers
27 appropriate in the circumstances.

28 6. Where shareholders' action under this section does
29 not satisfy a quorum or voting requirement applicable to the
30 authorization of the transaction by reason of the articles of
31 incorporation, the bylaws, or a provision of law, independent
32 action to satisfy those authorization requirements must be
33 taken by the shareholders, in which action shares that are not
34 qualified shares may participate.

35 Sec. 46. Section 490.870, subsection 1, paragraphs a and b,

1 Code 2011, are amended to read as follows:

2 ~~a.~~ Action by qualified directors disclaiming the
3 corporation's interest in the opportunity is taken in
4 compliance with the procedures set forth in section ~~490.832~~
5 490.862, as if the decision being made concerned a director's
6 conflicting interest transaction.

7 ~~b.~~ Shareholders' action disclaiming the corporation's
8 interest in the opportunity is taken in compliance with the
9 procedure set forth in section ~~490.832~~ 490.863, as if the
10 decision being made concerned a director's conflicting interest
11 transaction; except that, rather than making the ~~disclosure~~
12 "required disclosure" as ~~required~~ defined in section ~~490.832~~
13 490.860, in each case the director shall have made prior
14 disclosure to those acting on behalf of the corporation of all
15 material facts concerning the business opportunity that are
16 then known to the director.

17 Sec. 47. Section 490.1003, subsection 2, Code 2011, is
18 amended to read as follows:

19 2. a. Except as provided in sections 490.1005, 490.1007,
20 and 490.1008, after adopting the proposed amendment, the board
21 of directors must submit the amendment to the shareholders for
22 their approval. The board of directors must also transmit to
23 the shareholders a recommendation that the shareholders approve
24 the amendment, unless any of the following apply:

25 (1) The board of directors makes a determination that
26 because of conflicts of interest or other special circumstances
27 it should not make such a recommendation, ~~in which case the~~.

28 (2) Section 490.826 applies.

29 b. If paragraph "a", subparagraph (1) or (2), applies, the
30 board ~~of directors~~ must transmit to the shareholders the basis
31 for ~~the determination~~ so proceeding.

32 Sec. 48. Section 490.1104, subsection 2, Code 2011, is
33 amended to read as follows:

34 2. a. Except as provided in subsection 7 and in section
35 490.1105, after adopting the plan of merger or share exchange

1 the board of directors must submit the plan to the shareholders
2 for their approval. The board of directors must also transmit
3 to the shareholders a recommendation that the shareholders
4 approve the plan, unless ~~the~~ any of the following apply:

5 (1) The board of directors makes a determination that
6 because of conflicts of interest or other special circumstances
7 it should not make such a recommendation, in which case.

8 (2) Section 490.826 applies.

9 b. If paragraph "a", subparagraph (1) or (2), applies, the
10 board of directors must transmit to the shareholders the basis
11 for that determination so proceeding.

12 Sec. 49. Section 490.1106, subsection 1, unnumbered
13 paragraph 1, Code 2011, is amended to read as follows:

14 After a plan of merger or share exchange has been adopted
15 and approved as required by this chapter, articles of merger
16 or share exchange shall be ~~executed~~ signed on behalf of each
17 party to the merger or share exchange by any officer or other
18 duly authorized representative. The articles shall set forth
19 the following:

20 Sec. 50. Section 490.1108, subsection 2, Code 2011, is
21 amended to read as follows:

22 2. If a merger or share exchange is abandoned under
23 subsection 1 after articles of merger or share exchange have
24 been filed with the secretary of state but before the merger
25 or share exchange has become effective, a statement that the
26 merger or share exchange has been abandoned in accordance with
27 this section, ~~executed~~ signed on behalf of a party to the
28 merger or share exchange by an officer or other duly authorized
29 representative, shall be delivered to the secretary of state
30 for filing prior to the effective date of the merger or share
31 exchange. Upon filing, the statement shall take effect and the
32 merger or share exchange shall be deemed abandoned and shall
33 not become effective.

34 Sec. 51. Section 490.1202, subsection 2, Code 2011, is
35 amended to read as follows:

1 2. a. A disposition that requires approval of the
 2 shareholders under subsection 1 shall be initiated by
 3 a resolution by the board of directors authorizing the
 4 disposition. After adoption of such a resolution, the board
 5 of directors shall submit the proposed disposition to the
 6 shareholders for their approval. The board of directors shall
 7 also transmit to the shareholders a recommendation that the
 8 shareholders approve the proposed disposition, unless the any
 9 of the following apply:

10 (1) The board of directors makes a determination that
 11 because of conflicts of interest or other special circumstances
 12 it should not make such a recommendation, in which case.

13 (2) Section 490.826 applies.

14 b. If paragraph "a", subparagraph (1) or (2), applies, the
 15 board of directors shall transmit to the shareholders the basis
 16 for that determination so proceeding.

17 Sec. 52. Section 490.1301, Code 2011, is amended by adding
 18 the following new subsection:

19 NEW SUBSECTION. 5A. "Interested transaction" means a
 20 corporate action described in section 490.1302, subsection 1,
 21 other than a merger pursuant to section 490.1105, involving an
 22 interested person in which any of the shares or assets of the
 23 corporation are being acquired or converted. As used in this
 24 definition, all of the following apply:

25 a. "Beneficial owner" means any person who, directly
 26 or indirectly, through any contract, arrangement, or
 27 understanding, other than a revocable proxy, has or shares the
 28 power to vote, or to direct the voting of, shares; except that
 29 a member of a national securities exchange is not deemed to be
 30 a beneficial owner of securities held directly or indirectly
 31 by it on behalf of another person solely because the member is
 32 the record holder of the securities if the member is precluded
 33 by the rules of the exchange from voting without instruction
 34 on contested matters or matters that may affect substantially
 35 the rights or privileges of the holders of the securities to

1 be voted. When two or more persons agree to act together for
2 the purpose of voting their shares of the corporation, each
3 member of the group formed thereby is deemed to have acquired
4 beneficial ownership, as of the date of the agreement, of all
5 voting shares of the corporation beneficially owned by any
6 member of the group.

7 *b. "Excluded shares"* means shares acquired pursuant to an
8 offer for all shares having voting power if the offer was made
9 within one year prior to the corporate action for consideration
10 of the same kind and of a value equal to or less than that paid
11 in connection with the corporate action.

12 *c. "Interested person"* means a person, or an affiliate of a
13 person, who at any time during the one-year period immediately
14 preceding approval by the board of directors of the corporate
15 action was or had any of the following:

16 (1) Was the beneficial owner of twenty percent or more of
17 the voting power of the corporation, other than as owner of
18 excluded shares.

19 (2) Had the power, contractually or otherwise, other than as
20 owner of excluded shares, to cause the appointment or election
21 of twenty-five percent or more of the directors to the board of
22 directors of the corporation.

23 (3) Was a senior executive or director of the corporation
24 or a senior executive of any affiliate thereof, and that
25 senior executive or director will receive, as a result of the
26 corporate action, a financial benefit not generally available
27 to other shareholders as such, other than any of the following:

28 (a) Employment, consulting, retirement, or similar benefits
29 established separately and not as part of or in contemplation
30 of the corporate action.

31 (b) Employment, consulting, retirement, or similar benefits
32 established in contemplation of, or as part of, the corporate
33 action that are not more favorable than those existing before
34 the corporate action or, if more favorable, that have been
35 approved on behalf of the corporation in the same manner as is

1 provided in section 490.862.

2 (c) In the case of a director of the corporation who will,
3 in the corporate action, become a director of the acquiring
4 entity in the corporate action or one of its affiliates, rights
5 and benefits as a director that are provided on the same basis
6 as those afforded by the acquiring entity generally to other
7 directors of such entity or such affiliate.

8 Sec. 53. Section 490.1302, subsection 2, paragraph a, Code
9 2011, is amended by striking the paragraph and inserting in
10 lieu thereof the following:

11 a. Appraisal rights shall not be available for the holders
12 of shares of any class or series of shares which is any of the
13 following:

14 (1) A covered security under section 18(b)(1)(A) or (B) of
15 the federal Securities Act of 1933, as amended.

16 (2) Traded in an organized market and has at least two
17 thousand shareholders and a market value of at least twenty
18 million dollars, exclusive of the value of such shares held by
19 the corporation's subsidiaries, senior executives, directors,
20 and beneficial shareholders owning more than ten percent of
21 such shares.

22 (3) Issued by an open-end management investment company
23 registered with the United States securities and exchange
24 commission under the federal Investment Company Act of 1940 and
25 may be redeemed at the option of the holder at net asset value.

26 Sec. 54. Section 490.1302, subsection 2, paragraph b,
27 subparagraph (1), Code 2011, is amended to read as follows:

28 (1) The record date fixed to determine the shareholders
29 entitled to receive notice of, ~~and to vote at,~~ the meeting
30 of shareholders to act upon the corporate action requiring
31 appraisal rights.

32 Sec. 55. Section 490.1302, subsection 2, paragraph d, Code
33 2011, is amended by striking the paragraph and inserting in
34 lieu thereof the following:

35 d. Paragraph "a", shall not be applicable and appraisal

1 rights shall be available pursuant to subsection 1 for the
2 holders of any class or series of shares where the corporate
3 action is an interested transaction.

4 Sec. 56. Section 490.1302, subsection 2, paragraph e, Code
5 2011, is amended by striking the paragraph.

6 Sec. 57. Section 490.1302, subsection 4, Code 2011, is
7 amended by striking the subsection.

8 Sec. 58. Section 490.1320, Code 2011, is amended to read as
9 follows:

10 **490.1320 Notice of appraisal rights.**

11 1. ~~If Where any~~ proposed corporate action ~~described~~
12 specified in section 490.1302, subsection 1, is to be submitted
13 to a vote at a shareholders' meeting, the meeting notice must
14 state that the corporation has concluded that the shareholders
15 are, are not, or may be entitled to assert appraisal rights
16 under this part. If the corporation concludes that appraisal
17 rights are or may be available, a copy of this part must
18 accompany the meeting notice sent to those record shareholders
19 entitled to exercise appraisal rights.

20 2. In a merger pursuant to section 490.1105, the parent
21 corporation must notify in writing all record shareholders of
22 the subsidiary who are entitled to assert appraisal rights
23 that the corporate action became effective. Such notice must
24 be sent within ten days after the corporate action became
25 effective and include the materials described in section
26 490.1322.

27 3. Where any corporate action specified in section
28 490.1302, subsection 1, is to be approved by written consent
29 of the shareholders pursuant to section 490.704, all of the
30 following apply:

31 a. Written notice that appraisal rights are, are not, or may
32 be available must be sent to each record shareholder from whom
33 a consent is solicited at the time consent of such shareholder
34 is first solicited and, if the corporation has concluded that
35 appraisal rights are or may be available, must be accompanied

1 by a copy of this chapter.

2 b. Written notice that appraisal rights are, are not, or
3 may be available must be delivered together with the notice to
4 nonconsenting and nonvoting shareholders required by section
5 490.704, subsections 5 and 6, may include the materials
6 described in section 490.1322 and, if the corporation has
7 concluded that appraisal rights are or may be available, must
8 be accompanied by a copy of this chapter.

9 4. Where corporate action described in section 490.1302,
10 subsection 1, is proposed, or a merger pursuant to section
11 490.1105 is effected, the notice referred to in subsection 1
12 or 3, if the corporation concludes that appraisal rights are
13 or may be available, and in subsection 2 shall be accompanied
14 by all of the following:

15 a. The annual financial statements specified in section
16 490.1620, subsection 1, of the corporation that issued the
17 shares that may be subject to appraisal, which shall be as of
18 a date ending not more than sixteen months before the date of
19 the notice and shall comply with section 490.1620, subsection
20 2; provided that, if such annual financial statements are not
21 reasonably available, the corporation shall provide reasonably
22 equivalent financial information.

23 b. The latest available quarterly financial statements of
24 such corporation, if any.

25 5. The right to receive the information described in
26 subsection 4 may be waived in writing by a shareholder before
27 or after the corporate action.

28 Sec. 59. Section 490.1321, Code 2011, is amended to read as
29 follows:

30 **490.1321 Notice of intent to demand payment.**

31 1. If ~~proposed~~ a corporate action requiring appraisal
32 rights under specified in section 490.1302, subsection 1, is
33 submitted to a vote at a shareholders' meeting, a shareholder
34 who wishes to assert appraisal rights with respect to any class
35 or series of shares must do all of the following:

1 a. Deliver to the corporation before the vote is taken
2 written notice of the shareholder's intent to demand payment if
3 the proposed action is effectuated.

4 b. Not vote, or cause or permit to be voted, any shares of
5 such class or series in favor of the proposed action.

6 2. If a corporate action specified in section 490.1302,
7 subsection 1, is to be approved by less than unanimous written
8 consent, a shareholder who wishes to assert appraisal rights
9 with respect to any class or series of shares must not sign a
10 consent in favor of the proposed action with respect to that
11 class or series of shares.

12 3. A shareholder who ~~does not~~ fails to satisfy the
13 requirements of subsection 1 or 2, is not entitled to payment
14 under this part.

15 Sec. 60. Section 490.1322, subsection 1, Code 2011, is
16 amended to read as follows:

17 1. If proposed corporate action requiring appraisal rights
18 under section 490.1302, subsection 1, becomes effective, the
19 corporation must ~~deliver~~ send a written appraisal notice
20 and the form required by subsection 2, paragraph "a", to
21 all shareholders who satisfied the requirements of section
22 490.1321, subsection 1, or section 490.1321, subsection 2. In
23 the case of a merger under section 490.1105, the parent must
24 deliver ~~a written~~ an appraisal notice and form to all record
25 shareholders who may be entitled to assert appraisal rights.

26 Sec. 61. Section 490.1322, subsection 2, unnumbered
27 paragraph 1, Code 2011, is amended to read as follows:

28 The appraisal notice must be ~~sent~~ delivered no earlier than
29 the date the corporate action specified in section 490.1302,
30 subsection 1, became effective and no later than ten days after
31 such date and must do all of the following:

32 Sec. 62. Section 490.1322, subsection 2, paragraph a, Code
33 2011, is amended to read as follows:

34 a. ~~Be accompanied by~~ Supply a form that ~~specifies~~ does all
35 of the following:

1 (1) Specifies the first date of any announcement to
2 shareholders made prior to the date the corporate action became
3 effective of the first announcement to shareholders of the
4 principal terms of the proposed corporate action and requires,
5 if any.

6 (2) If such announcement was made, requires the shareholder
7 asserting appraisal rights to certify whether beneficial
8 ownership of those shares for which appraisal rights are
9 asserted was acquired before that date.

10 (3) Requires the shareholder asserting appraisal rights to
11 certify whether or not beneficial ownership of those shares for
12 which appraisal rights are asserted was acquired before that
13 date, and that the such shareholder did not vote for or consent
14 to the transaction.

15 Sec. 63. Section 490.1322, subsection 2, paragraph b,
16 subparagraph (2), Code 2011, is amended to read as follows:

17 (2) A date by which the corporation must receive the form,
18 which date shall not be fewer than forty nor more than sixty
19 days after the date the appraisal notice ~~and form are~~ is sent
20 under subsection 1, and state that the shareholder shall have
21 waived the right to demand appraisal with respect to the
22 shares unless the form is received by the corporation by such
23 specified date.

24 Sec. 64. Section 490.1323, subsections 1 and 3, Code 2011,
25 are amended to read as follows:

26 1. A shareholder who receives notice pursuant to section
27 490.1322 and who wishes to exercise appraisal rights must
28 ~~certify on~~ sign and return the form sent by the corporation
29 and, in the case of certificated shares, deposit the
30 shareholder's certificates in accordance with the terms of
31 the notice by the date referred to in the notice pursuant to
32 section 490.1322, subsection 2, paragraph "b", subparagraph
33 (2). In addition, if applicable, the shareholder must certify
34 on the form whether the beneficial owner of such shares
35 acquired beneficial ownership of the shares before the date

1 required to be set forth in the notice pursuant to section
 2 490.1322, subsection 2, paragraph "a". If a shareholder fails
 3 to make this certification, the corporation may elect to
 4 treat the shareholder's shares as after-acquired shares under
 5 section 490.1325. In addition, a shareholder who wishes to
 6 exercise appraisal rights must execute and return the form and,
 7 in a case of certificated shares, deposit the shareholder's
 8 certificates in accordance with the terms of the notice
 9 by the date referred to in the notice pursuant to section
 10 490.1322, subsection 2, paragraph "b", subparagraph (2). Once
 11 a shareholder deposits that shareholder's certificates or, in
 12 the case of uncertificated shares, returns the ~~executed~~ signed
 13 forms, that shareholder loses all rights as a shareholder,
 14 unless the shareholder withdraws pursuant to subsection 2.

15 3. A shareholder who does not ~~execute~~ sign and return the
 16 form and, in the case of certificated shares, deposit the
 17 shareholder's share certificates where required, each by the
 18 date set forth in the notice described in section 490.1322,
 19 subsection 2, shall not be entitled to payment under this
 20 division.

21 Sec. 65. Section 490.1324, subsection 2, paragraph a, Code
 22 2011, is amended to read as follows:

23 a. (i) ~~Financial~~ The annual financial statements specified
 24 in section 490.1620, subsection 1, of the corporation that
 25 issued the shares to be appraised, consisting of a balance
 26 sheet as of the end of a fiscal year which shall be of a date
 27 ending not more than sixteen months before the date of payment,
 28 an income statement for that year, a statement of changes
 29 in shareholders' equity for that year, and the shall comply
 30 with section 490.1620, subsection 2; provided that, if such
 31 annual financial statements are not reasonably available, the
 32 corporation shall provide reasonably equivalent financial
 33 information.

34 (ii) The latest available interim quarterly financial
 35 statements of such corporation, if any.

1 Sec. 66. Section 490.1325, subsection 1, Code 2011, is
2 amended to read as follows:

3 1. A corporation may elect to withhold payment required
4 by section 490.1324 from any shareholder who was required to,
5 but did not certify that beneficial ownership of all of the
6 shareholder's shares for which appraisal rights are asserted
7 was acquired before the date set forth in the appraisal notice
8 sent pursuant to section 490.1322, subsection 2, paragraph "a".

9 Sec. 67. Section 490.1331, Code 2011, is amended to read as
10 follows:

11 **490.1331 Court costs and ~~counsel fees~~ expenses.**

12 1. The court in an appraisal proceeding commenced under
13 section 490.1330 shall determine all court costs of the
14 proceeding, including the reasonable compensation and expenses
15 of appraisers appointed by the court. The court shall assess
16 the court costs against the corporation, except that the court
17 may assess court costs against all or some of the shareholders
18 demanding appraisal, in amounts the court finds equitable, to
19 the extent the court finds such shareholders acted arbitrarily,
20 vexatiously, or not in good faith with respect to the rights
21 provided by this division.

22 2. The court in an appraisal proceeding may also assess the
23 ~~fees and expenses of counsel and experts~~ for the respective
24 parties, in amounts the court finds equitable, for ~~either~~ any
25 of the following:

26 a. Against the corporation and in favor of any or all
27 shareholders demanding appraisal if the court finds the
28 corporation did not substantially comply with the requirements
29 of section 490.1320, 490.1322, 490.1324, or 490.1325.

30 b. Against either the corporation or a shareholder demanding
31 appraisal, in favor of any other party, if the court finds that
32 the party against whom the ~~fees and~~ expenses are assessed acted
33 arbitrarily, vexatiously, or not in good faith with respect to
34 the rights provided by this chapter.

35 3. If the court in an appraisal proceeding finds that the

1 ~~services of counsel for~~ expenses incurred by any shareholder
 2 were of substantial benefit to other shareholders similarly
 3 situated, and that ~~the fees for those services~~ such expenses
 4 should not be assessed against the corporation, the court may
 5 ~~award to such counsel reasonable fees to~~ direct that such
 6 expenses be paid out of the amounts awarded the shareholders
 7 who were benefited.

8 4. To the extent the corporation fails to make a required
 9 payment pursuant to section 490.1324, 490.1325, or 490.1326,
 10 the shareholder may sue directly for the amount owed and, to
 11 the extent successful, shall be entitled to recover from the
 12 corporation ~~all costs and~~ expenses of the suit, ~~including~~
 13 ~~counsel fees.~~

14 Sec. 68. NEW SECTION. 490.1340 Other remedies limited.

15 1. The legality of a proposed or completed corporate
 16 action described in section 490.1302, subsection 1, shall not
 17 be contested, nor may the corporate action be enjoined, set
 18 aside, or rescinded, in a legal or equitable proceeding by a
 19 shareholder after the shareholders have approved the corporate
 20 action.

21 2. Subsection 1 does not apply to a corporate action that
 22 meets any of the following conditions:

23 a. Was not authorized and approved in accordance with the
 24 applicable provisions of any of the following:

25 (1) Division X, XI, or XII of this chapter.

26 (2) The articles of incorporation or bylaws.

27 (3) The resolution of the board of directors authorizing the
 28 corporate action.

29 b. Was procured as a result of fraud, a material
 30 misrepresentation, or an omission of a material fact necessary
 31 to make statements made, in light of the circumstances in which
 32 they were made, not misleading.

33 c. Is an interested transaction, unless it has been
 34 recommended by the board of directors in the same manner as
 35 is provided in section 490.862 and has been approved by the

1 shareholders in the same manner as is provided in section
2 490.863 as if the interested transaction were a director's
3 conflicting interest transaction.

4 *d.* Is approved by less than unanimous consent of the
5 voting shareholders pursuant to section 490.704, if all of the
6 following apply:

7 (1) The challenge to the corporate action is brought by a
8 shareholder who did not consent and as to whom notice of the
9 approval of the corporate action was not effective at least ten
10 days before the corporate action was effected.

11 (2) The proceeding challenging the corporate action is
12 commenced within ten days after notice of the approval of the
13 corporate action is effective as to the shareholder bringing
14 the proceeding.

15 Sec. 69. Section 490.1402, subsection 2, paragraph a, Code
16 2011, is amended to read as follows:

17 *a.* (1) The board of directors must recommend dissolution to
18 the shareholders unless ~~the~~ any of the following apply:

19 (a) The board of directors determines that because of
20 conflict of interest or other special circumstances it should
21 make no recommendation and communicates.

22 (b) Section 490.826 applies.

23 (2) If paragraph "a", subparagraph (1) or (2), applies,
24 it must communicate the basis for its determination to the
25 shareholders so proceeding.

26 Sec. 70. Section 490.1430, Code 2011, is amended to read as
27 follows:

28 **490.1430 Grounds for judicial dissolution.**

29 1. The district court may dissolve a corporation in any of
30 the following ways:

31 ~~1-~~ a. A proceeding by the attorney general, if it is
32 established that ~~either~~ any of the following apply:

33 ~~a-~~ (1) The corporation obtained its articles of
34 incorporation through fraud.

35 ~~b-~~ (2) The corporation has continued to exceed or abuse the

1 authority conferred upon it by law.

2 ~~2.~~ b. A proceeding by a shareholder if it is established
3 that any of the following conditions exist:

4 ~~a.~~ (1) The directors are deadlocked in the management of
5 the corporate affairs, the shareholders are unable to break the
6 deadlock, and either irreparable injury to the corporation is
7 threatened or being suffered, or the business and affairs of
8 the corporation can no longer be conducted to the advantage of
9 the shareholders generally, because of the deadlock.

10 ~~b.~~ (2) The directors or those in control of the corporation
11 have acted, are acting, or will act in a manner that is
12 illegal, oppressive, or fraudulent.

13 ~~c.~~ (3) The shareholders are deadlocked in voting power
14 and have failed, for a period that includes at least two
15 consecutive annual meeting dates, to elect successors to
16 directors whose terms have expired.

17 ~~d.~~ (4) The corporate assets are being misapplied or wasted.

18 ~~3.~~ c. A proceeding by a creditor if it is established that
19 either any of the following apply:

20 ~~a.~~ (1) The creditor's claim has been reduced to judgment,
21 the execution on the judgment returned unsatisfied, and the
22 corporation is insolvent.

23 ~~b.~~ (2) The corporation has admitted in writing that the
24 creditor's claim is due and owing and the corporation is
25 insolvent.

26 ~~4.~~ d. A proceeding by the corporation to have its voluntary
27 dissolution continued under court supervision.

28 e. A proceeding by a shareholder if the corporation has
29 abandoned its business and has failed within a reasonable time
30 to liquidate and distribute its assets and dissolve.

31 2. Subsection 1, paragraph "b", shall not apply in the
32 case of a corporation that, on the date of the filing of the
33 proceeding, has shares which are any of the following:

34 a. Listed on the New York stock exchange, the American stock
35 exchange, or on any exchange owned or operated by the NASDAQ

1 stock market, l.l.c., or listed or quoted on a system owned or
2 operated by the national association of securities dealers,
3 inc.

4 b. Not so listed or quoted, but are held by at least three
5 hundred shareholders and the shares outstanding have a market
6 value of at least twenty million dollars, exclusive of the
7 value of such shares held by the corporation's subsidiaries,
8 senior executives, directors, and beneficial shareholders
9 owning more than ten percent of such shares.

10 3. As used in this section, "beneficial shareholder" has the
11 meaning specified in section 490.1301, subsection 2.

12 Sec. 71. Section 490.1431, subsection 4, Code 2011, is
13 amended to read as follows:

14 4. Within ten days of the commencement of a proceeding
15 ~~under section 490.1430, subsection 2, to dissolve a corporation~~
16 ~~that has no shares listed on a national securities exchange or~~
17 ~~regularly traded in a market maintained by one or more members~~
18 ~~of a national securities exchange~~ under section 490.1430,
19 subsection 1, paragraph "b", the corporation must send to all
20 shareholders, other than the petitioner, a notice stating that
21 the shareholders are entitled to avoid the dissolution of the
22 corporation by electing to purchase the petitioner's shares
23 under section 490.1434, and a copy of section 490.1434.

24 Sec. 72. Section 490.1432, subsections 1 and 5, Code 2011,
25 are amended to read as follows:

26 1. A Unless an election to purchase has been filed under
27 section 490.1434, a court in a judicial proceeding brought to
28 dissolve a corporation may appoint one or more receivers to
29 wind up and liquidate, or one or more custodians to manage,
30 the business and affairs of the corporation. The court shall
31 hold a hearing, after notifying all parties to the proceeding
32 and any interested persons designated by the court, before
33 appointing a receiver or custodian. The court appointing a
34 receiver or custodian has exclusive jurisdiction over the
35 corporation and all its property wherever located.

1 5. The court from time to time during the receivership
 2 or custodianship may order compensation paid and ~~expense~~
 3 ~~disbursements or reimbursements made~~ expenses paid or
 4 reimbursed to the receiver or custodian ~~and the receiver's~~
 5 ~~or custodian's counsel~~ from the assets of the corporation or
 6 proceeds from the sale of the assets.

7 Sec. 73. Section 490.1434, subsections 1, 2, 4, and 5, Code
 8 2011, are amended to read as follows:

9 1. In a proceeding under section 490.1430, subsection 2 1,
 10 paragraph "b", to dissolve a corporation ~~that has no shares~~
 11 ~~listed on a national securities exchange or regularly traded~~
 12 ~~in a market maintained by one or more members of a national or~~
 13 ~~affiliated securities association,~~ the corporation may elect
 14 or, if it fails to elect, one or more shareholders may elect to
 15 purchase all shares owned by the petitioning shareholder at the
 16 fair value of the shares. An election pursuant to this section
 17 shall be irrevocable unless the court determines that it is
 18 equitable to set aside or modify the election.

19 2. An election to purchase pursuant to this section may
 20 be filed with the court at any time within ninety days after
 21 the filing of the petition under section 490.1430, subsection
 22 2 1, paragraph "b", or at such later time as the court in its
 23 discretion may allow. If the election to purchase is filed
 24 by one or more shareholders, the corporation shall, within
 25 ten days thereafter, give written notice to all shareholders,
 26 other than the petitioner. The notice must state the name
 27 and number of shares owned by the petitioner and the name and
 28 number of shares owned by each electing shareholder and must
 29 advise the recipients of their right to join the election to
 30 purchase shares in accordance with this section. Shareholders
 31 who wish to participate must file notice of their intention
 32 to join in the purchase no later than thirty days after
 33 the effective date of the notice to them. All shareholders
 34 who have filed an election or notice of their intention to
 35 participate in the election to purchase thereby become parties

1 to the proceeding and shall participate in the purchase in
2 proportion to their ownership of shares as of the date the
3 first election was filed, unless they otherwise agree or the
4 court otherwise directs. After an election has been filed by
5 the corporation or one or more shareholders, the proceeding
6 under section 490.1430, subsection 2 1, paragraph "b", shall
7 not be discontinued or settled, nor shall the petitioning
8 shareholder sell or otherwise dispose of the shareholder's
9 shares, unless the court determines that it would be equitable
10 to the corporation and the shareholders, other than the
11 petitioner, to permit such discontinuance, settlement, sale, or
12 other disposition.

13 4. If the parties are unable to reach an agreement as
14 provided for in subsection 3, the court, upon application of
15 any party, shall stay the section 490.1430, subsection 2 1,
16 paragraph "b", proceedings and determine the fair value of the
17 petitioner's shares as of the day before the date on which the
18 petition under section 490.1430, subsection 2 1, paragraph
19 "b", was filed or as of such other date as the court deems
20 appropriate under the circumstances.

21 5. Upon determining the fair value of the shares, the
22 court shall enter an order directing the purchase upon such
23 terms and conditions as the court deems appropriate, which may
24 include payment of the purchase price in installments, where
25 necessary in the interests of equity, provision for security
26 to assure payment of the purchase price and any additional
27 costs, fees, and expenses as may have been awarded, and, if
28 the shares are to be purchased by shareholders, the allocation
29 of shares among them. In allocating petitioner's shares among
30 holders of different classes of shares, the court shall attempt
31 to preserve the existing distribution of voting rights among
32 holders of different classes insofar as practicable and may
33 direct that holders of a specific class or classes shall not
34 participate in the purchase. Interest may be allowed at the
35 rate and from the date determined by the court to be equitable,

1 but if the court finds that the refusal of the petitioning
2 shareholder to accept an offer of payment was arbitrary or
3 otherwise not in good faith, no interest shall be allowed. If
4 the court finds that the petitioning shareholder has probable
5 grounds for relief under section 490.1430, subsection 2 1,
6 paragraph ~~"b" or "d"~~ "b", subparagraph (2) or (4), it may award
7 to the petitioning shareholder reasonable fees and expenses of
8 counsel and of any experts employed by the shareholder.

9 Sec. 74. Section 490.1508, subsection 2, Code 2011, is
10 amended to read as follows:

11 2. If ~~a registered agent changes~~ the street address of the
12 a registered agent's business office changes, the ~~registered~~
13 agent may change the street address of the registered office
14 of any foreign corporation for which the ~~agent~~ person is the
15 registered agent by notifying the corporation in writing of
16 the change, and signing, ~~either manually or in facsimile~~, and
17 delivering to the secretary of state for filing a statement of
18 change that complies with the requirements of subsection 1 and
19 recites that the corporation has been notified of the change.

20 Sec. 75. NEW SECTION. **490.1523 Transfer of authority.**

21 1. A foreign business corporation authorized to transact
22 business in this state that converts to a foreign nonprofit
23 corporation or to any form of foreign unincorporated entity
24 that is required to obtain a certificate of authority or make
25 a similar type of filing with the secretary of state if it
26 transacts business in this state shall file with the secretary
27 of state an application for transfer of authority signed by
28 any officer or other duly authorized representative. The
29 application shall set forth all of the following:

30 a. The name of the corporation.

31 b. The type of unincorporated entity to which it has been
32 converted and the jurisdiction whose laws govern its internal
33 affairs.

34 c. Any other information that would be required in a filing
35 under the laws of this state by an unincorporated entity of the

1 type the corporation has become seeking authority to transact
2 business in this state.

3 2. The application for transfer of authority shall be
4 delivered to the secretary of state for filing and shall take
5 effect at the effective time provided in section 490.123.

6 3. Upon the effectiveness of the application for transfer of
7 authority, the authority of the corporation under this chapter
8 to transact business in this state shall be transferred without
9 interruption to the converted entity which shall thereafter
10 hold such authority subject to the provisions of the laws of
11 this state applicable to that type of unincorporated entity.

12 Sec. 76. Section 490.1601, subsection 4, Code 2011, is
13 amended to read as follows:

14 4. A corporation shall maintain its records in ~~written~~
15 the form of a document, including an electronic record, or in
16 another form capable of conversion into ~~written~~ paper form
17 within a reasonable time.

18 Sec. 77. Section 490.1602, Code 2011, is amended to read as
19 follows:

20 **490.1602 Inspection of records by shareholders.**

21 1. A shareholder of a corporation is entitled to
22 inspect and copy, during regular business hours at the
23 corporation's principal office, any of the records of the
24 corporation described in section 490.1601, subsection 5, if the
25 shareholder gives the corporation signed written notice of the
26 shareholder's demand at least five business days before the
27 date on which the shareholder wishes to inspect and copy.

28 2. For any meeting of shareholders for which the record date
29 for determining shareholders entitled to vote at the meeting
30 is different than the record date for notice of the meeting,
31 any person who becomes a shareholder subsequent to the record
32 date for notice of the meeting and is entitled to vote at
33 the meeting is entitled to obtain from the corporation upon
34 request the notice and any other information provided by the
35 corporation to shareholders in connection with the meeting,

1 unless the corporation has made such information generally
2 available to shareholders by posting it on its website or by
3 other generally recognized means. Failure of a corporation to
4 provide such information does not affect the validity of action
5 taken at the meeting.

6 3. A shareholder of a corporation is entitled to inspect and
7 copy, during regular business hours at a reasonable location
8 specified by the corporation, any of the following records
9 of the corporation if the shareholder meets the requirements
10 of subsection ~~3~~ 4 and gives the corporation a signed written
11 notice of the shareholder's demand at least five business days
12 before the date on which the shareholder wishes to inspect and
13 copy any of the following:

14 *a.* Excerpts from minutes of any meeting of the board of
15 directors, ~~records of any action of~~ or a committee of the board
16 of directors while acting in place of the board of directors
17 on behalf of the corporation, minutes of any meeting of the
18 shareholders, and records of action taken by the shareholders,
19 ~~or~~ board of directors, or a committee of the board without
20 a meeting, to the extent not subject to inspection under
21 subsection ~~1~~ of this section.

22 *b.* Accounting records of the corporation.

23 *c.* The record of shareholders.

24 ~~3.~~ 4. A shareholder may inspect and copy the records
25 described in subsection ~~2~~ 3 only if all of the following apply:

26 *a.* The shareholder's demand is made in good faith and for
27 a proper purpose.

28 *b.* The shareholder describes with reasonable particularity
29 the shareholder's purpose and the records the shareholder
30 desires to inspect.

31 *c.* The records are directly connected with the shareholder's
32 purpose.

33 ~~4.~~ 5. The right of inspection granted by this section shall
34 not be abolished or limited by a corporation's articles of
35 incorporation or bylaws.

1 ~~5.~~ 6. This section does not affect ~~either~~ any of the
2 following:

3 a. The right of a shareholder to inspect records under
4 section 490.720 or, if the shareholder is in litigation with
5 the corporation, to the same extent as any other litigant.

6 b. The power of a court, independently of this chapter, to
7 compel the production of corporate records for examination.

8 7. For purposes of this section, "shareholder" includes a
9 beneficial owner whose shares are held in a voting trust or by
10 a nominee on the shareholder's behalf.

11 Sec. 78. Section 490.1603, subsection 3, Code 2011, is
12 amended to read as follows:

13 3. The corporation may comply at its expense with a
14 shareholder's demand to inspect the record of shareholders
15 under section 490.1602, ~~subsection 2, paragraph "c",~~ by
16 providing the shareholder with a list of shareholders that was
17 compiled no earlier than the date of the shareholder's demand.

18 Sec. 79. Section 490.1604, subsection 2, Code 2011, is
19 amended to read as follows:

20 2. If a corporation does not within a reasonable time
21 allow a shareholder to inspect and copy any other records, the
22 shareholder who complies with section 490.1602, ~~subsections 2~~
23 ~~and 3~~ may apply to the district court in the county where the
24 corporation's principal office or, if none in this state, its
25 registered office is located for an order to permit inspection
26 and copying of the records demanded. The court shall dispose
27 of an application under this subsection on an expedited basis.

28 Sec. 80. Section 490.1606, subsection 1, Code 2011, is
29 amended to read as follows:

30 1. Whenever notice ~~is~~ would otherwise be required to be
31 given under any provision of this chapter to ~~any~~ a shareholder,
32 such notice ~~shall need not be required to be~~ given if either
33 any of the following ~~applies~~ apply:

34 a. ~~Notice~~ Notices to the shareholders of two consecutive
35 annual meetings, and all notices of meetings during the period

1 between such two consecutive annual meetings, have been sent to
2 such shareholder at such shareholder's address as shown on the
3 records of the corporation and have been returned undeliverable
4 or could not be delivered.

5 *b.* All, but not less than two, payments of dividends on
6 securities during a twelve-month period, or two consecutive
7 payments of dividends on securities during a period of more
8 than twelve months, have been sent to such shareholder at
9 such shareholder's address as shown on the records of the
10 corporation and have been returned undeliverable or could not
11 be delivered.

12 Sec. 81. Section 490.1620, Code 2011, is amended by striking
13 the section and inserting in lieu thereof the following:

14 **490.1620 Financial statements for shareholders.**

15 1. A corporation shall deliver to its shareholders
16 annual financial statements, which may be consolidated or
17 combined statements of the corporation and one or more of its
18 subsidiaries, as appropriate, that include a balance sheet as
19 of the end of the fiscal year, an income statement for that
20 year, and a statement of changes in shareholders' equity for
21 the year unless that information appears elsewhere in the
22 financial statements. If financial statements are prepared for
23 the corporation on the basis of generally accepted accounting
24 principles, the annual financial statements must also be
25 prepared on that basis.

26 2. If the annual financial statements are reported upon by a
27 public accountant, the report must accompany them. If not, the
28 statements must be accompanied by a statement of the president
29 or the person responsible for the corporation's accounting
30 records which does all of the following:

31 *a.* States such person's reasonable belief whether the
32 statements were prepared on the basis of generally accepted
33 accounting principles and, if not, describing the basis of
34 preparation.

35 *b.* Describes any respects in which the statements were

1 not prepared on a basis of accounting consistent with the
2 statements prepared for the preceding year.

3 3. Within one hundred twenty days after the close of each
4 fiscal year, the corporation shall send the annual financial
5 statements to each shareholder. Thereafter, on written
6 request from a shareholder to whom the statements were not
7 sent, the corporation shall send the shareholder the latest
8 financial statements. A public corporation may fulfill its
9 responsibilities under this section by delivering the specified
10 financial statements, or otherwise making them available, in
11 any manner permitted by the applicable rules and regulations of
12 the United States securities and exchange commission.

13 Sec. 82. Section 490.1703, Code 2011, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 3. In the event that any provision of this
16 chapter is deemed to modify, limit, or supersede the federal
17 Electronic Signatures in Global and National Commerce Act, 15
18 U.S.C. § 7001 et seq., the provisions of this chapter shall
19 control to the maximum extent permitted by section 102(a)(2) of
20 that federal Act.

21 Sec. 83. REPEAL. Section 490.832, Code 2011, is repealed.

22 Sec. 84. AMENDMENTS PREVAIL OVER REPEAL. The section of
23 this division of this Act amending section 490.805, subsection
24 2, Code Supplement 2011, shall prevail over the repeal of the
25 enactment of and amendment to that provision by 2011 Iowa Acts,
26 chapter 2, section 4, pursuant to 2011 Iowa Acts, chapter 2,
27 section 9, subsection 1.

28 Sec. 85. EFFECTIVE DATE. This division of this Act takes
29 effect January 1, 2013.

30 DIVISION II

31 FUTURE PROVISIONS

32 Sec. 86. Section 490.140, subsection 21A, Code Supplement
33 2011, is amended by striking the subsection and inserting in
34 lieu thereof the following:

35 21A. "*Public corporation*" means a corporation that has

1 shares listed on a national securities exchange or regularly
2 traded in a market maintained by one or more members of a
3 national securities association.

4 Sec. 87. Section 490.732, subsection 4, Code 2011, is
5 amended by striking the subsection and inserting in lieu
6 thereof the following:

7 4. An agreement authorized by this section shall cease to be
8 effective when the corporation becomes a public corporation.
9 If the agreement ceases to be effective for any reason, the
10 board of directors may, if the agreement is contained or
11 referred to in the corporation's articles of incorporation or
12 bylaws, adopt an amendment to the articles of incorporation or
13 bylaws, without shareholder action, to delete the agreement and
14 any references to it.

15 Sec. 88. EFFECTIVE DATE. This division of this Act takes
16 effect upon the repeal of 2011 Iowa Acts, chapter 2, as
17 provided in section 9, subsection 1, of that Act.

18 EXPLANATION

19 BACKGROUND. The "Iowa Business Corporation Act" (Code
20 chapter 490), a model Act adopted by the American Bar
21 Association, governs the requirements for the creation,
22 organization, and operation of corporations and the
23 relationship between shareholders, directors, and officers of
24 the corporation. Generally, the Act's provisions establish
25 default requirements and procedures which may be modified by a
26 corporation's articles of incorporation or bylaws.

27 PUBLIC CORPORATIONS. A public corporation is a corporation
28 that has a class of voting stock that is listed on a national
29 securities exchange or held of record by more than 2,000
30 shareholders (Code section 490.140). The bill amends the
31 definition to eliminate the reference to a class of shares
32 or number of shareholders. It provides that a corporation
33 is public if traded in a market maintained by a member of
34 the national securities association. The bill also amends
35 a provision regulating shareholder agreements that govern a

1 corporation's corporate affairs including by eliminating or
2 restricting the powers of its board of directors (Code section
3 490.732). Specifically, the bill provides that a shareholder
4 agreement is automatically terminated when the corporation
5 becomes public. These provisions take effect January 1, 2015.

6 NOTICES, DOCUMENTS, AND COMMUNICATION. A notice must be
7 in writing unless oral notice is reasonable (Code section
8 490.141). The bill requires that notices be in English.
9 It provides for the electronic transmission and receipt
10 and acknowledgment of information. The bill replaces the
11 requirement that documents be executed with a requirement
12 that they be signed, including documents associated with
13 the adoption or abandonment of articles of merger or share
14 exchange (Code sections 490.1106 and 490.1108). The bill also
15 authorizes a corporation to keep its records in an electronic
16 form so long as it can be converted into a paper form (Code
17 section 490.1601). The corporation is required to deliver a
18 written notice, report, or statement to shareholders who share
19 a common address, complies with delivery requirements, by
20 delivering to that address, unless a shareholder makes a timely
21 objection (Code section 490.144).

22 QUALIFIED DIRECTORS. In a number of circumstances a
23 director must be considered "disinterested" when taking an
24 action affecting the welfare of the corporation. The bill
25 eliminates the term "disinterested" and replaces it with
26 "qualified" (Code section 490.143; see Code sections 490.853
27 and 490.855). The bill requires a director to be qualified
28 under different circumstances which may involve board action
29 or court proceedings. For purposes of dismissing a derivative
30 proceeding by a court based on a good-faith determination of
31 directors (Code section 490.744), directors are qualified if
32 they do not have a material interest in the outcome of the
33 proceeding or a material relationship with a person who has
34 such an interest. For purposes of advancing expenses to a
35 board member before the disposition of a case (Code section

1 490.853) or later indemnifying a director (Code section
2 490.855), the authorization must be made by directors who are
3 qualified because they are not parties to the proceeding, do
4 not have a conflicting interest in the related transaction,
5 and do not have a material relationship with a director
6 who is a party or has a conflicting interest. For purposes
7 of voting to excuse a director from a conflicting interest
8 transaction (Code section 490.862), the vote must be taken
9 by directors who are qualified because they do not have a
10 conflict or have a material relationship with the director who
11 does have a conflict. For purposes of determining whether a
12 director may take advantage of a business opportunity because
13 other directors disclaimed the corporation's interest in the
14 opportunity (Code section 490.870), the directors are qualified
15 if the business opportunity was a conflicting interest
16 transaction for those directors.

17 DIRECTORS AND OFFICERS — FUNCTIONS AND DUTIES. Generally,
18 a corporation must have a board of directors, unless dispensed
19 with pursuant to a shareholder agreement (Code sections 490.801
20 and 490.732). The bill provides that the business affairs of a
21 corporation may be subject to the directors' oversight rather
22 than direct management. It authorizes a corporate officer to
23 designate recipients of compensation awards (e.g., rights,
24 options, or warrants associated with shares) (Code section
25 490.624). The bill substitutes the term "functions" in lieu
26 of "duties" in some places when referring to an officer's
27 obligations (Code section 490.841).

28 SHAREHOLDER MEETINGS — WRITTEN CONSENT IN LIEU OF HOLDING
29 MEETINGS. Shareholders are allowed to act by written consent
30 without holding a meeting if the action is taken by unanimous
31 written consent (Code section 490.704). The bill provides
32 that a corporation's articles of incorporation may provide for
33 shareholder action by less than unanimous written consent,
34 if a written consent is signed by shareholders having the
35 minimum number of votes that would be required to authorize the

1 action at a shareholder meeting assuming that all shareholders
2 entitled to vote were present. It creates a corresponding
3 exception to the requirement that a corporation must hold at
4 least one annual shareholder meeting, presumably to elect
5 directors (Code sections 490.701 and 490.803), by providing
6 that the annual meeting is not necessary when directors are
7 elected by the written consent of shareholders. The bill
8 also provides a number of procedures for providing notice to
9 shareholders and tabulating written consents delivered to the
10 corporation.

11 SHAREHOLDER MEETING — RECORD DATE. A corporation
12 establishes procedures for providing notice to and voting by
13 shareholders at a meeting (or by written consent) according to
14 a record date. The record date determines both shareholders
15 who are entitled to notice of the meeting and to vote at
16 the meeting. The catch-all provision states that the record
17 date is the date before notice is mailed to a voting group or
18 shareholders (Code section 490.705), although a record date
19 may be established by court order (Code section 490.703) or
20 according to the corporation's bylaws or board of directors
21 (Code section 490.707). The bill provides that there may be
22 more than one record date. According to the bill, the record
23 date for a shareholder meeting may be established by the
24 corporation's bylaws or by the board unless the board provides
25 a different date to determine shareholders entitled to vote at
26 the meeting (Code section 490.707). The bill provides that
27 the corporation may be required to provide a list of names of
28 shareholders entitled to vote at the meeting, to be available
29 for inspection (Code section 490.720). The record date is
30 also used to determine when appraisal rights of shareholders
31 apply (Code section 490.1302). The bill requires shareholders'
32 appraisal rights to be triggered on the record date by tying
33 it only to when a shareholder is entitled to receive notice
34 and not when entitled to vote on the matter. The bill also
35 provides that the board may fix a record date for determining

1 when a shareholder is entitled to vote that is different than
2 the record date for determining when a shareholder is entitled
3 to notice of the meeting. A person who becomes a shareholder
4 after the record date for the notice, and is otherwise entitled
5 to vote at the meeting, may obtain the notice and other
6 information provided to the shareholders in preparation for the
7 meeting (Code sections 490.1602 and 490.1606).

8 **SHAREHOLDER MEETINGS — REMOTE PARTICIPATION.** The bill
9 authorizes shareholders to participate in a meeting of
10 shareholders by means of remote communication to the extent
11 approved by the board (Code section 490.709).

12 **ELECTIONS AND VOTING — CUMULATIVE VOTING.** Generally,
13 directors are elected by a plurality of votes cast unless the
14 corporation's articles of incorporation provide for cumulative
15 voting allowing shareholders to cast all their votes for a
16 single candidate (Code section 490.728). The bill provides
17 that shareholders otherwise entitled to vote cumulatively
18 cannot so vote unless the meeting notice authorizes it, or a
19 shareholder who has that right gives notice to the corporation
20 before the meeting.

21 **LEGAL PROCEEDING — DERIVATIVE ACTIONS.** As a result of a
22 derivative action, the court may order a corporation to pay
23 the plaintiff's expenses (defined in Code section 490.140)
24 if the court determines that the proceeding has resulted in
25 substantial benefit to the corporation and alternatively may
26 order the plaintiff to pay the defendant's expenses if it
27 finds the proceeding was commenced without reasonable cause
28 or for an improper purpose (Code section 490.746). The bill
29 eliminates the court's statutory authority to order the payment
30 of attorney fees.

31 **PROCEEDINGS — COURT APPOINTMENT OF A CUSTODIAN OR RECEIVER.**
32 The bill provides that a shareholder may obtain relief from a
33 court, due to an injury suffered by the corporation due to the
34 action or inaction of the board (through deadlock or fraud) or
35 because the corporation is insolvent (Code section 490.748).

1 The custodian or receiver appointed by the court has all
2 authority to manage the corporation as provided by court order.

3 ELECTIONS AND VOTING. The bill provides for the directors'
4 terms of office including when the board's terms are staggered
5 (Code sections 490.806 and 490.806A). The bill provides that a
6 corporation's articles of incorporation may govern situations
7 in which a nominated director fails to receive the requisite
8 votes for election (Code sections 490.805, 490.806, 490.806A,
9 and 490.807). The bill also provides that in the case of a
10 director's vacancy, where a director was elected by a voting
11 group of shareholders, and the vacancy is to be filled by the
12 remaining directors, only directors elected by that voting
13 group may vote to fill the vacancy (Code section 490.810).

14 RIGHT OF SHAREHOLDERS TO VOTE. The bill provides that a
15 corporation may agree to submit a matter to a vote of its
16 shareholders even if the board determines not to recommend
17 the matter (Code section 490.826). It expressly authorizes
18 such vote on an amendment to the corporation's articles of
19 incorporation (Code section 490.1003), an action on a plan of
20 merger or share exchange (Code section 490.1104), the approval
21 of a plan of merger or share exchange (Code section 490.1106),
22 and the dissolution of the corporation (Code section 490.1402).

23 DIRECTORS AND OFFICERS — STANDARDS OF CONDUCT. A director
24 must perform all required duties in good faith and in a
25 manner that the director reasonably believes to be in the
26 corporation's best interest (Code section 490.830) and an
27 officer has the same duty to act in good faith (Code section
28 490.842). The bill expressly obligates a director to disclose
29 relevant material regarding the corporation to the board. It
30 also provides that an officer has an obligation to inform a
31 superior officer or the board (or a committee of the board)
32 about the affairs of the corporation or a probable material
33 violation of law or a material breach of duty involving an
34 officer or other person connected to the corporation.

35 PROCEEDINGS — ADVANCING FUNDS TO A DIRECTOR OR INDEMNIFYING

1 A DIRECTOR FOR EXPENSES. A corporation may advance funds to a
2 director or indemnify the director for legal expenses incurred
3 in the course of a director's defense of an act or omission
4 (Code sections 490.850, 490.853, 490.855, and 490.858). The
5 bill provides that in the case of advances, writings required
6 to be submitted to the board (e.g., an affirmation that the
7 director acted in compliance with applicable standards of
8 conduct or a promise to repay advanced funds) must be in
9 writing (Code section 490.853). It also provides that when
10 the board authorizes an advance or indemnification, the voting
11 directors must be qualified rather than disinterested (Code
12 sections 490.853 and 490.854). Finally, the bill provides that
13 the defending director's right to an advance or indemnification
14 in effect prior to the director's act or omission cannot be
15 eliminated or impaired after the conduct occurred, unless that
16 right was expressly qualified in the authorization (i.e., in
17 the articles of incorporation, bylaws, or board's resolution)
18 (Code section 490.858).

19 DIRECTOR'S CONFLICT OF INTEREST — GENERAL. Generally, a
20 director is prohibited from taking action on a matter which
21 would be detrimental to the interests of the corporation. The
22 bill replaces the current provision addressing a director's
23 conflict of interest (Code section 490.832) with four
24 provisions (Code sections 490.860 through 490.863) that
25 govern conflicting interest transactions. In order to be so
26 classified, a transaction must be effectuated or proposed to
27 be effectuated by the corporation or an entity controlled
28 by the corporation. In addition, the director must be in a
29 special position to take personal advantage of the transaction,
30 as a party to the transaction or by virtue of the fact that
31 the director, or a related person, has a material financial
32 interest in the transaction. The bill provides that a director
33 is related to a person if the person is a close family member,
34 an individual who lives in the same home, or another entity
35 controlled by the director. The bill provides that in order

1 for a court to invalidate a transaction or otherwise provide a
 2 legal or equitable remedy, such conduct must fall within the
 3 statutory parameters (Code section 490.861). The definition
 4 of "director's conflicting interest transaction" requires
 5 knowledge of the transaction, except where the director is a
 6 party. In addition, the transaction must occur at a relevant
 7 time, meaning the time at the which the director's action is
 8 required (e.g., a board vote) or when the director's action
 9 somehow consummates the transaction (Code section 490.862).

10 DIRECTOR'S CONFLICT OF INTEREST — EXCUSED TRANSACTIONS
 11 (SAFE HARBOR EXCEPTION). The bill excuses a director's
 12 conduct, and consequently validates the transaction, even if
 13 there exists a conflicting interest transaction (Code section
 14 490.861), sometimes referred to as "safe harbor", in certain
 15 circumstances. First, it may be excused if a majority of
 16 qualified directors (but not less than two) vote to approve
 17 the transaction or the action is approved by an authorized
 18 committee in which all members are qualified directors (Code
 19 section 490.862). The director who has the conflict must
 20 disclose information regarding the conflict to the extent that
 21 the information is not required to be protected under law or
 22 some ethical rule of confidentiality (Code section 490.862).
 23 The transaction is excused if the shareholders later ratify
 24 the transaction according to specific procedural requirements
 25 (Code section 490.863) after disclosure (but no provision for
 26 limited disclosure). Finally, the transaction is excused if
 27 the transaction is fair to the corporation, although neither
 28 directors' nor shareholders' action was taken. The bill
 29 provides that in any legal action attacking a director, the
 30 plaintiff has the burden of proof (Code section 490.831).

31 DIRECTOR'S BUSINESS OPPORTUNITY (SAFE HARBOR EXCEPTION).
 32 An analogous situation to a conflicting interest transaction
 33 is when a director seeks a corporation's permission prior to
 34 the director's action. The bill allows qualified directors
 35 or shareholders to disclaim the corporation's interest before

1 the director proceeds in taking advantage of the business
2 opportunity (see Code section 490.870). Instead of making a
3 "required disclosure" as provided for conflicts (Code sections
4 490.860 and 490.862), the director must provide the corporation
5 material facts concerning the business opportunity then
6 known. The qualified directors or shareholders disclaiming
7 the corporation's interest must be done in the same manner
8 as if the matter concerned a director's conflicting interest
9 transaction (Code sections 490.862 and 490.863). However, a
10 director's decision not to use the procedures for disclaimer
11 does not create a negative inference or alter a burden of
12 proof in a subsequent action alleging an improper taking of a
13 corporate opportunity.

14 SHAREHOLDER APPRAISAL RIGHTS — GENERAL RULE. A number of
15 corporate actions may trigger the right of a shareholder to
16 obtain an appraisal of the corporation and obtain fair payment
17 of shares, including mergers, share exchanges, disposition
18 of assets, amendments to the articles of incorporation, and
19 conversion of the corporation to another entity (Code section
20 490.1302). A corporation must pay shareholders the amount the
21 corporation estimates to be the fair value of the shares plus
22 interest (Code section 490.1324).

23 SHAREHOLDER APPRAISAL RIGHTS — LIMITATION ON THE GENERAL
24 RULE (MARKET-OUT EXCEPTION). The general rule is limited in
25 the case where there are at least 2,000 shareholders and the
26 market value of the shares equals at least \$20 million (the
27 so-called "market-out" exception), presumably because the true
28 value for the shares can be obtained on the market. However,
29 the amount does not include shares held by the corporation's
30 subsidiaries, senior executives, directors, and beneficial
31 shareholders owning more than 10 percent of the shares.
32 "Beneficial ownership" refers to the control of shares by a
33 person who does not own them including the power to vote, or to
34 direct the voting of the shares (Code section 490.1302).

35 SHAREHOLDER APPRAISAL RIGHTS — NEW MARKET-OUT EXCEPTIONS.

1 The bill provides two new categories under the market-out
2 exception: (1) when the shares are classified as a covered
3 security regulated by the United States securities exchange
4 commission under the federal Securities Act of 1933, and (2)
5 when the shares are issued by an open-end management investment
6 company registered by the securities and exchange commission
7 under the federal Investment Company Act of 1940 (Code section
8 490.1302).

9 SHAREHOLDER APPRAISAL RIGHTS — LIMITATIONS ON THE
10 MARKET-OUT EXCEPTIONS. The bill eliminates a provision
11 which allows shareholder appraisal rights notwithstanding
12 the market-out exception in cases where the corporation's
13 shares or assets are being acquired or converted, whether by
14 merger, share exchange, or otherwise (Code section 490.1302).
15 Instead, the bill allows such rights in cases where the
16 corporate action involves an interested transaction, which is a
17 corporate action, other than a merger, involving an interested
18 person in which the shares or assets of the corporation are
19 being acquired or converted. A person is "interested" if
20 the person is a beneficial owner of 20 percent or more of
21 the corporation's voting shares, controlled the appointment
22 or election of 25 percent or more of the directors, or was a
23 senior executive or director of the corporation entitled to
24 receive certain financial benefits (Code section 490.1301).

25 SHAREHOLDER APPRAISAL RIGHTS — NOTICE. A corporation must
26 notify shareholders of their appraisal rights when a corporate
27 action is submitted to a vote at a shareholder meeting (Code
28 section 490.1320). The bill provides for notice when approval
29 is performed by written consent in lieu of a meeting (Code
30 section 490.704). A shareholder must provide notice of an
31 intent to exercise appraisal rights before the corporate action
32 (vote) is taken (Code section 490.1321). In order to remain
33 eligible to exercise those rights, the shareholder must not
34 vote on the matter. A shareholder who plans on asserting
35 appraisal rights cannot likewise exercise rights after signing

1 a consent in favor of the proposal (Code section 490.1321).
2 If a corporate action requiring appraisal rights becomes
3 effective, the corporation must deliver a written appraisal
4 notice and form (Code section 490.1322). The bill provides for
5 the contents of the notice, including information regarding
6 an announcement to shareholders made prior to the date the
7 corporate action became effective and requires a shareholder
8 asserting appraisal rights to certify beneficial ownership.
9 The bill provides for perfecting shareholder appraisal rights
10 by signing and returning the form (Code section 490.1323). The
11 bill provides an estimated (prepaid) payment to shareholders
12 exercising their appraisal rights after the form's due date
13 (Code section 490.1324). The bill provides for a financial
14 statement required to accompany the payment (Code section
15 490.1620), and allows the corporation to substitute another
16 document in lieu of a financial statement if it is unavailable.

17 **SHAREHOLDER APPRAISAL RIGHTS — COURT COSTS.** As part of
18 a shareholder appraisal rights proceeding, the court must
19 determine the court costs of the proceeding, and may assess
20 such costs against the corporation or shareholders demanding
21 appraisal (Code section 490.1331). The bill amends the
22 provision to eliminate a court's discretion to assess fees
23 associated with attorneys and experts.

24 **SHAREHOLDER RIGHTS — LIMITATION ON OTHER REMEDIES.** The
25 bill provides that a corporate action triggering a right to
26 appraisal (Code section 490.1302) cannot be enjoined, set
27 aside, or rescinded by a shareholder after the shareholder
28 has approved the corporate action (Code section 490.1340).
29 However, this limitation does not apply to four situations:
30 (1) where the process of approving the corporate action was
31 flawed (e.g., unauthorized in the corporation's articles of
32 incorporation), (2) the corporate action was procured by fraud,
33 (3) the corporate action was an interested transaction in the
34 same manner as a director's conflicting interest transaction
35 (Code section 490.860), or (4) the transaction was approved,

1 but without a meeting (Code section 490.704) and by less
2 than unanimous consent and the challenge is brought by a
3 nonconsenting director.

4 JUDICIAL DISSOLUTION — LIMITATION ON ACTIONS. A court may
5 dissolve a corporation in a proceeding brought by shareholders
6 on a number of grounds, including the directors are deadlocked,
7 the directors are acting fraudulently, the shareholders
8 are deadlocked, or there is waste of corporate assets (Code
9 section 490.1430). The bill adds a new ground, that the
10 corporation has abandoned its business and failed to liquidate
11 and distribute its assets and dissolve. The bill also
12 provides that the right of a shareholder to bring the action
13 does not apply to a corporation listed on the New York stock
14 exchange, the American stock exchange, an exchange owned or
15 controlled by NASDAQ, or listed on a system owned or controlled
16 by the national association of security dealers (NASD).
17 Alternatively, it does not apply to a corporation having 300
18 or more shareholders holding shares valued at \$20 million
19 or more, again excluding shares held by the corporation's
20 subsidiaries, senior executives, directors, and beneficial
21 shareholders owning more than 10 percent of the shares (Code
22 section 490.1302).

23 FOREIGN CORPORATIONS — TRANSFER OF AUTHORITY. The bill
24 provides for the conversion of a foreign business corporation
25 authorized to do business in this state into a domestic
26 corporation by applying to the secretary of state (Code section
27 490.1523).

28 REPLACEMENT OF FUTURE REPEALED PROVISIONS. In 2011, the
29 general assembly enacted SF 325 (2011 Iowa Acts, chapter
30 2), carving out a special provision which provided for the
31 staggered terms of directors of public corporations and
32 providing for the repeal of the Act on December 31, 2014. This
33 bill amends one of those provisions, Code section 490.805,
34 subsection 2, and consequently the bill provides that the
35 provision of this Act amending that Code section prevails over

1 the repeal of the 2011 amendments to that Code section.
2 The bill provides that once the provisions in SF 325 are
3 repealed, provisions in the model Act referring to public
4 corporations are enacted.